

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

3 LONE STAR TECHNOLOGICAL ) ( )  
INNOVATIONS, LLC, ) ( )  
4 PLAINTIFF, ) ( CIVIL ACTION NO.  
 ) ( 6:19-CV-59-RWS  
5 ) ( )  
VS. ) ( )  
6 ) ( )  
 ) ( TYLER, TEXAS  
7 ) ( )  
ASUSTEK COMPUTER, INC., ) ( MAY 19, 2021  
8 DEFENDANT. ) ( 9:00 A.M.

TRANSCRIPT OF JURY TRIAL

10 BEFORE THE HONORABLE ROBERT W. SCHROEDER, III

UNITED STATES DISTRICT JUDGE

13 FOR THE PLAINTIFF: Mr. Joshua J. Bennett  
14 Mr. Bradley D. Liddle  
15 Ms. Monica Little  
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Texarkana, Texas 75501

25 (Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

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## 08:46:45 1 P R O C E E D I N G S

08:46:46 2 (Jury out.)

09:00:23 3 THE COURT: Good morning, everyone.

09:00:27 4 Is there anything we need to discuss before the  
09:00:31 5 jury comes in?09:00:32 6 MR. BENNETT: Two quick things, Your Honor. Well,  
09:00:35 7 one of them may not be so quick, but one is, I think. The  
09:00:38 8 parties are working on the charge. We know it's due by  
09:00:42 9 noon. If we get through the lunch break, so at 1:00 --

09:00:46 10 THE COURT: Yes.

09:00:47 11 MR. BENNETT: Thank you, Your Honor. We just  
09:00:48 12 wanted to highlight -- we discussed this some already.  
09:00:51 13 They're going to use the patent as we discussed last night.  
09:00:55 14 This may be an area where a sidebar may be required,  
09:00:59 15 depending on the question, and we'll just have to wait and  
09:01:03 16 see what it is.

09:01:03 17 THE COURT: Sure.

09:01:04 18 MR. BENNETT: But there's some competing theories  
09:01:08 19 about what the claim construction is that are going to try  
09:01:11 20 to come in through Dr. Ducharme, and we may need to talk  
09:01:15 21 about those questions before the question is asked or an  
09:01:15 22 answer may be provided. So this may be an area where we  
09:01:24 23 may need to request a sidebar.09:01:24 24 THE COURT: That's fine. That's fine. We'll see  
09:01:26 25 where we are breakwise. If we can send the jury on a break

09:01:31 1 at that point, we'll do that. Otherwise, we may just go  
09:01:35 2 back in chambers in the conference room.

09:01:37 3 MR. BENNETT: Okay. And I think the way we -- we  
09:01:41 4 would just invoke it, it will be sustained and you'll  
09:01:41 5 enforce it. The way that we'll bring it up with Your Honor  
09:01:43 6 is we'll object and request that to Your Honor if we can  
09:01:45 7 approach? Is that --

09:01:47 8 THE COURT: Sure. Yeah.

09:01:47 9 MR. BENNETT: Okay.

09:01:49 10 THE COURT: Absolutely.

09:01:51 11 Anything else?

09:01:51 12 MR. JOSHI: Nothing from us, Your Honor.

09:01:53 13 THE COURT: Okay. Good.

09:01:55 14 Is our jury here?

09:01:57 15 COURT SECURITY OFFICER: Yes, sir.

09:01:58 16 THE COURT: Let's have them brought in, please.

09:02:01 17 COURT SECURITY OFFICER: Yes, sir.

09:02:02 18 All rise for the jury.

09:02:10 19 (Jury in.)

09:02:41 20 THE COURT: Please be seated.

09:02:44 21 Good morning, ladies and gentlemen of the jury and  
09:02:46 22 welcome back. I hope you all had a nice evening last  
09:02:50 23 evening. Thanks for being here on time so that we could  
09:02:54 24 again start promptly this morning.

09:02:56 25 When we concluded the day yesterday, Mr. Saba was

09:03:01 1 in his direct examination of the witness.

09:03:04 2 Mr. Saba, at this time, you may continue.

09:03:07 3 MR. SABA: Thank you, Your Honor.

09:03:07 4 ALFRED D. DUCHARME, PH.D., PLAINTIFF'S WITNESS,

09:03:07 5 PREVIOUSLY SWORN

09:03:10 6 CONTINUED DIRECT EXAMINATION

09:03:10 7 BY MR. SABA:

09:03:11 8 Q. Dr. Ducharme, we were talking about -- we had a long  
09:03:14 9 afternoon yesterday, and when we concluded, we were talking  
09:03:18 10 about your opinions of validity with regard to the '435  
09:03:21 11 patent. Do you remember that?

09:03:21 12 A. Yes.

09:03:22 13 Q. Okay. Can you give -- so one of the things that you  
09:03:28 14 were explaining yesterday afternoon before we broke, we  
09:03:31 15 were discussing this Brett prior art reference. You  
09:03:35 16 remember that?

09:03:36 17 A. Yes.

09:03:36 18 Q. All right. And your opinions regarding Brett don't  
09:03:39 19 change the validity of the patent?

09:03:42 20 A. No.

09:03:42 21 Q. Okay. Why don't you -- I'm sorry, was that a yes or a  
09:03:47 22 no?

09:03:47 23 A. No.

09:03:47 24 Q. All right. Let me ask that question again.

09:03:50 25 In summary, is it your opinion that Brett does not

09:03:59 1 invalidate the '435 patent?

09:04:01 2 A. Yes.

09:04:02 3 Q. All right. Can you give us -- the ladies and

09:04:39 4 gentlemen -- can you give the ladies and gentlemen of the

09:04:41 5 jury just a quick summary of why you do not believe Brett

09:04:48 6 somehow invalidates the '435 patent?

09:04:50 7 A. The Brett patent is concerned with essentially

09:04:55 8 post-editing of film, so 35-millimeter film, old films, and

09:05:00 9 then converting those to digital video. And it's really

09:05:04 10 not related to the '435 patent at all.

09:05:07 11 Q. Does the Brett reference even concern digital video?

09:05:14 12 A. No. There is --

09:05:19 13 Q. And would it have been obvious for someone to have --

09:05:36 14 someone of skill in the art to have modified the invention

09:05:41 15 disclosed in Brett?

09:05:43 16 A. No.

09:05:44 17 Q. Let me ask the question again.

09:05:47 18         Would it have been obvious for someone of skill in

09:05:51 19 the art to have modified Brett to cover the claims of the

09:05:54 20 '435 patent?

09:05:54 21 A. No.

09:05:55 22 Q. And to the clear, the '435 patent is discussing real

09:06:08 23 time digital video, correct?

09:06:10 24 A. Yes.

09:06:10 25 Q. And for the record, does Brett discuss real time

09:06:15 1 digital video?

09:06:15 2 A. No.

09:06:16 3 Q. All right. I want to talk to you about double

09:06:19 4 patenting, okay?

09:06:20 5 A. Okay.

09:06:20 6 Q. All right. What is double patenting?

09:06:23 7 A. It's when a patentee has multiple patents.

09:06:27 8 Q. And do you -- do you have multiple patents?

09:06:34 9 A. I do.

09:06:37 10 Q. And what is the significance of having more than one

09:06:42 11 patent?

09:06:42 12 A. I don't understand the question.

09:06:45 13 Q. All right. Do you understand that ASUS's -- or

09:06:55 14 Dr. Stevenson on behalf of ASUS is arguing that the '435 is

09:07:01 15 invalid because of double patenting?

09:07:05 16 A. I am aware of that.

09:07:06 17 Q. And do you agree with that?

09:07:08 18 A. No.

09:07:08 19 Q. Tell the ladies and gentlemen of the jury why.

09:07:13 20 A. The patentee has multiple patents. The '012 patent and

09:07:24 21 the '435 patent, those two patents are very different.

09:07:30 22 They're -- the function, the way it affects the pixels is

09:07:35 23 different.

09:07:35 24 The '012 uses look-up tables, and the '435 uses

09:07:41 25 arithmetic and logical operations. And it's just a

09:07:45 1 different way to code. They're different means of  
09:07:49 2 achieving a color change.

09:07:51 3 Q. Let me unpack that a bit.

09:07:54 4 Lone Star has -- owns the '012 patent. Is that  
09:08:00 5 what you said?

09:08:01 6 A. Yes.

09:08:01 7 Q. All right. Will you tell the ladies and gentlemen of  
09:08:04 8 the jury generally what the '012 patent is?

09:08:06 9 A. It's a way of affecting color change in a display  
09:08:12 10 device where you use this -- it's a coding terminology,  
09:08:16 11 look-up tables. I called it a decoder ring yesterday.  
09:08:21 12 It's a way of programming, but you affect all of the pixels  
09:08:27 13 -- rather -- well, you affect all of the pixels to effect  
09:08:32 14 the change.

09:08:33 15 Q. And with regard to this concept of double patenting, do  
09:08:36 16 you understand that ASUS is taking the position that the  
09:08:40 17 '012 somehow invalidates the '435?

09:08:48 18 A. Yes.

09:08:48 19 Q. But they were both -- the '012 patent and the '435  
09:08:52 20 patent were both issued by the United States government,  
09:08:54 21 right?

09:08:54 22 A. Yes.

09:08:55 23 Q. Do you have an opinion as to why the '012 does not  
09:09:01 24 render obvious the '435 patent?

09:09:02 25 A. They are separate inventions and that was -- that's --

09:09:12 1 the fact that the U.S. Patent Office granted both patents  
09:09:17 2 means that they're both novel inventions of their own.  
09:09:21 3 They're separate and independent.

09:09:34 4 Q. Can you give us a brief explanation of how the '012  
09:09:38 5 differs from the '435 patent?

09:09:40 6 A. The '012 uses look-up tables, and the '435 uses this  
09:09:44 7 arithmetic and logical operations. They are different  
09:09:49 8 programming means.

09:09:50 9 Q. All right. Dr. Ducharme, I want to switch topics for a  
09:09:53 10 second, and I want to ask you about a document that was  
09:09:58 11 referenced in your report. And it's been offered and  
09:10:00 12 admitted already.

09:10:03 13 MR. SABA: Denver, if you could kindly put on 814.

09:10:03 14 BY MR. SABA:

09:10:03 15 Q. And I'll direct your attention to the screen.

09:10:15 16 Now, this is a webpage from ASUS, correct?

09:10:18 17 A. Yes.

09:10:19 18 Q. Okay. And can you -- can you tell us a little bit  
09:10:23 19 about this? We've seen this exhibit before so I don't want  
09:10:23 20 to go -- I don't want to talk too much about this, but can  
09:10:30 21 you tell us what your -- oh, pardon me. We need to get the  
09:10:33 22 monitor on.

09:11:09 23 Okay. Dr. Ducharme, can you tell the ladies and  
09:11:25 24 gentlemen of the jury a little bit about this briefly? You  
09:11:29 25 need some more context?

09:11:31 1 A. Yes, it appears to be a website. The title of this  
09:11:36 2 particular page is: What is 6-axis Color Independent  
09:11:39 3 Control.

09:11:40 4 Q. All right. And are you -- did you go to this website?

09:11:42 5 A. Yes.

09:11:42 6 Q. Okay.

09:11:44 7 MR. SABA: Denver, if you would, go to -- I  
09:11:47 8 believe it's Page 3, although don't quote me on that. I  
09:12:11 9 think it's all the way down on the bottom.

09:12:11 10 BY MR. SABA:

09:12:14 11 Q. All right. Dr. Ducharme, what are we looking at here?

09:12:17 12 A. This is on the ASUS website under Support, and it's an  
09:12:20 13 FAQ, a Frequently Asked Questions page.

09:12:23 14 Q. Okay. And so it says: What is 6-axis color  
09:12:26 15 independent control, correct?

09:12:27 16 A. Yes.

09:12:28 17 Q. And then it says: FAQ. I assume that means Frequently  
09:12:32 18 Asked Questions?

09:12:32 19 A. Yes.

09:12:33 20 Q. Why might a consumer go to this website?

09:12:37 21 A. They would go to this website for support. Apparently,  
09:12:51 22 they would refer to the FAQ for answers to questions they  
09:12:51 23 might have --

09:12:51 24 MR. SABA: Okay. And if you could scroll --

09:12:54 25 A. -- about the use of their products.

09:12:55 1 BY MR. SABA:

09:12:55 2 Q. Pardon me, Dr. Ducharme.

09:13:00 3 MR. SABA: If you could scroll down. Excuse me,

09:13:02 4 Austin [sic]. It was the -- could you blow up the answer

09:13:04 5 to the FAQ? Thank you.

09:13:06 6 BY MR. SABA:

09:13:07 7 Q. All right. Dr. Ducharme, so it says: ASUS features

09:13:12 8 and advanced color adjustment so you can individually

09:13:17 9 customize hue or saturation for each access color under the

09:13:26 10 scenery mode and dark mode. For example, you can adjust

09:13:29 11 six colors, red, green, blue, cyan, magenta, and yellow

09:13:30 12 without affecting the output of other colors, correct?

09:13:33 13 A. Yes.

09:13:33 14 Q. And that's what you were demonstrating yesterday after

09:13:37 15 lunch; is that accurate?

09:13:38 16 A. That's correct.

09:13:39 17 Q. Do you know why -- excuse me.

09:13:42 18 Does this summarize, in your opinion, the

09:13:44 19 invention of the '435 patent?

09:13:45 20 A. Yes.

09:13:45 21 Q. Do you know why ASUS would include this color

09:13:51 22 adjustment in their product?

09:13:53 23 A. I believe it's because it's a valuable feature that

09:14:01 24 their users desire.

09:14:04 25 Q. Another question I wanted to ask you with regard to the

09:14:08 1 manuals is this. Is it relatively easy for an individual  
09:14:12 2 to pull a product manual from a manufacturer's website?

09:14:17 3 A. Yes.

09:14:18 4 Q. And were you able to pull manuals directly from the  
09:14:31 5 ASUS website?

09:14:32 6 A. Yes.

09:14:33 7 Q. All right. Dr. Ducharme, are you being compensated for  
09:14:45 8 your time -- for the time you spent working on this case?

09:14:47 9 A. Yes.

09:14:47 10 Q. At what hourly rate?

09:14:49 11 A. It's \$350 per hour.

09:14:51 12 Q. Does your compensation depend in any way on the outcome  
09:14:56 13 of the case?

09:14:58 14 A. No.

09:14:59 15 MR. SABA: No further questions -- or pass the  
09:15:01 16 witness, Your Honor.

09:15:02 17 THE COURT: Thank you.

09:15:02 18 Cross-examination?

09:15:21 19 MR. JOSHI: Your Honor, if we were going to use  
09:15:24 20 the display, should we set up now, or wait until the  
09:15:28 21 time when -- are you -- can someone --

09:15:28 22 THE COURT: Are you ready to -- are you ready to  
09:15:29 23 use it now?

09:15:30 24 MR. JOSHI: We're not ready to use it right away,  
09:15:32 25 no. But we can wait until the break, maybe.

09:15:35 1 THE COURT: That's fine.

09:15:36 2 MR. JOSHI: Okay. Can we please have the monitor

09:15:55 3 switched over? Yes.

09:16:19 4 May I begin, Your Honor?

09:16:21 5 THE COURT: You may, yes.

09:16:23 6 CROSS-EXAMINATION

09:16:23 7 BY MR. JOSHI:

09:16:26 8 Q. Good morning, Dr. Ducharme.

09:16:26 9 A. Good morning.

09:16:27 10 Q. Nice meeting you finally.

09:16:28 11 A. Pleased to meet you.

09:16:30 12 Q. I've seen your expert reports. Heard about you.

09:16:33 13 My name is Vinay Joshi. It's spelled V-i-n-a-y,

09:16:36 14 J-o-s-h-i. I have some questions for you today.

09:16:38 15 A. Okay.

09:16:38 16 Q. So what we have up here is Defense Exhibit 1, which is

09:16:54 17 a copy of the United States Patent '435. Is this the

09:17:02 18 patent that Lone Star is asserting against ASUS in this

09:17:05 19 case, sir?

09:17:06 20 A. Yes.

09:17:06 21 Q. And this patent issued on April 20th, 2004; is that

09:17:14 22 right?

09:17:14 23 A. That's correct.

09:17:15 24 Q. And when was it filed?

09:17:17 25 A. August 6, 2001.

09:17:20 1 Q. Okay. It was filed in 2001. It was in prosecution  
09:17:23 2 before the Patent Office for about two years or a little  
09:17:26 3 bit more, and then issued in 2004, correct?  
09:17:30 4 A. Yes.  
09:17:31 5 Q. And how many inventors are on this patent?  
09:17:39 6 A. There's one -- two inventors, Segman and Yaacov.  
09:17:53 7 Q. Have you spoken with either of those inventors?  
09:17:56 8 A. No.  
09:17:57 9 Q. Now, let's go to the claims of the patent, Mr. Oliver.  
09:18:13 10 So now, what you are here to testify about are the  
09:18:18 11 following claims, as I understand it, Claim 1?  
09:18:21 12 A. Yes.  
09:18:22 13 Q. Claim 2?  
09:18:26 14 A. Yes.  
09:18:28 15 MR. JOSHI: So we can -- just scrolling down the  
09:18:28 16 claims.  
09:18:28 17 BY MR. JOSHI:  
09:18:36 18 Q. Claim 3?  
09:18:36 19 A. Yes.  
09:18:37 20 Q. Claim 5?  
09:18:40 21 A. Yes.  
09:18:40 22 Q. Claim 6?  
09:18:42 23 A. Yes.  
09:18:43 24 Q. Claim 13?  
09:18:45 25 A. Yes.

09:18:46 1 Q. Claim 14?

09:18:48 2 A. Yes.

09:18:48 3 Q. And Claim 15?

09:18:51 4 A. Yes.

09:18:52 5 Q. And all of those claims, other than one, begin with a

09:18:58 6 phrase "the method of Claim 1," correct?

09:19:02 7 A. Yes.

09:19:03 8 Q. So Claim 1 is the only independent claim, and all the

09:19:08 9 other claims I just mentioned depend on Claim 1?

09:19:11 10 A. That's correct.

09:19:12 11 Q. So if the members of the jury decide that ASUS does not

09:19:20 12 infringe Claim 1, would that automatically mean that ASUS

09:19:26 13 does not infringe any other claim?

09:19:30 14 A. I -- that's a legal issue. I don't -- I'm not sure I

09:19:36 15 have an opinion on that.

09:19:37 16 Q. Okay. So just to clarify, should the members of the

09:19:44 17 jury beside that ASUSTeK does not infringe Claim 1, you're

09:19:47 18 unsure as to what happens with the rest of the claims?

09:19:54 19 A. Well, because they're dependent, I believe that -- I

09:20:08 20 don't know.

09:20:08 21 Q. Okay. Okay. And then we begin with Claim 1.

09:20:18 22 MR. JOSHI: So, Mr. Oliver, would you zoom out

09:20:21 23 just a little bit so we can see all the sections of

09:20:24 24 Claim 1? Let me just -- I'm just going to pull up my hard

09:20:29 25 copy for a second.

09:20:29 1 BY MR. JOSHI:

09:20:34 2 Q. You see that Claim 1 has a preamble at the top that  
09:20:42 3 begins with "a method for independently controlling." Do  
09:20:46 4 you see that?

09:20:46 5 A. Yes.

09:20:46 6 Q. And then there's a Limitation (a), there's a  
09:20:48 7 Limitation (b), there's a Limitation (c), Limitation (d),  
09:20:58 8 and Limitation (e).

09:20:59 9 A. Yes, I see that.

09:21:01 10 Q. Okay. Now, Dr. Ducharme, if these members of the jury  
09:21:05 11 start comparing this claim with ASUS's products and they  
09:21:10 12 start reading from the top of the claim and make their way  
09:21:16 13 downwards, the very first time they notice a meaningful  
09:21:22 14 difference between Claim 1 and ASUS products, would ASUS  
09:21:32 15 products not infringe Claim 1?

09:21:37 16 A. I'm -- can you clarify the question?

09:21:39 17 Q. Sure. ASUS products have to be different from Claim 1  
09:21:45 18 in just one way, correct? They don't have to be different  
09:21:49 19 from (a), they don't have to be different from (b), they  
09:21:52 20 don't have to be different from (c), (d) and (e), they just  
09:21:56 21 have to be different from one of those?

09:22:00 22 A. For -- for what result?

09:22:03 23 Q. For there to be non-infringement.

09:22:13 24 A. I don't know.

09:22:14 25 Q. Okay. You don't know? So you don't know whether there

09:22:18 1 has to be just one difference, two difference, or  
09:22:21 2 everything has to be different?

09:22:22 3 A. If any one of these limitations is found to be invalid,  
09:22:37 4 then the accused product would not infringe is my  
09:22:43 5 understanding.

09:22:44 6 Q. Okay. Did you look that up when you prepared your  
09:22:47 7 expert report?

09:22:48 8 A. I -- I don't recall. I -- I may have known it before  
09:22:54 9 that.

09:22:54 10 Q. Do you know how to compare a patent claim with a  
09:22:57 11 product? Do you know how to do that?

09:22:59 12 A. Yes.

09:23:00 13 Q. Okay. And when you -- when you did your comparison  
09:23:06 14 between the claim and the ASUS product, did you ask  
09:23:09 15 yourself if (a) is in the product, if (b) is in the  
09:23:15 16 product, if (c) is in the product, and so on?

09:23:18 17 A. I looked to see if the product practices each one of  
09:23:23 18 those claim limitations.

09:23:26 19 Q. Okay. And by practice, this means the product is used  
09:23:28 20 for this method, correct?

09:23:30 21 A. Yes.

09:23:31 22 Q. And the product has to be able to perform all the steps  
09:23:34 23 of the method?

09:23:35 24 A. Yes.

09:23:36 25 Q. And if the product does not perform one step of the

09:23:41 1 method but performs all the other steps of the method, it  
09:23:46 2 still does not infringe, correct?

09:23:49 3 A. I'm not sure I kept that straight in my mind. Can  
09:23:54 4 you -- can you repeat the question?

09:23:56 5 Q. Sure. So let's say metaphorically speaking I have the  
09:24:01 6 patent claim in my one hand, and I have the product in my  
09:24:04 7 other hand.

09:24:05 8 A. Mm-hmm.

09:24:05 9 Q. I read 1(a), and I said: This product, the -- it  
09:24:11 10 cannot do the method of 1(a). Can I stop right there and  
09:24:18 11 say this product doesn't infringe, or do I need to keep  
09:24:22 12 reading 1(b), 1(c), 1(d)?

09:24:26 13 A. Yes. I believe, you know, if any one claim limitation  
09:24:34 14 isn't practiced, then it doesn't infringe is my  
09:24:37 15 understanding.

09:24:37 16 Q. Okay. Thank you.

09:24:41 17 Now, I listened to you very carefully. I had to  
09:24:46 18 so I could prepare my questions. So I listened to you very  
09:24:49 19 carefully yesterday and today, and as far as I know, you  
09:24:55 20 did not present any evidence that ASUSTeK or anyone that  
09:25:03 21 works at ASUSTeK infringes any of these claims in the  
09:25:07 22 United States?

09:25:10 23 MR. SABA: Your Honor, I'm going to object to  
09:25:12 24 mischaracterization and argumentative.

09:25:17 25 THE COURT: Can you rephrase the question?

09:25:19 1 MR. JOSHI: Sure.

09:25:20 2 BY MR. JOSHI:

09:25:20 3 Q. You didn't present any evidence -- let me take a step

09:25:23 4 back.

09:25:24 5 Do you know what direct infringement is?

09:25:30 6 A. Yes.

09:25:30 7 Q. How does one directly infringe Claim 1?

09:25:34 8 A. They practice the method. They use -- they use the

09:25:39 9 claim.

09:25:39 10 Q. My understanding is that you did not present any

09:25:49 11 evidence that anyone from ASUSTeK directly infringes

09:25:55 12 Claim 1 of this patent.

09:25:57 13 MR. SABA: Same objection, Your Honor.

09:25:58 14 MR. JOSHI: I think that's a fair question,

09:26:00 15 Your Honor.

09:26:00 16 THE COURT: I think it is a fair question.

09:26:02 17 MR. SABA: Thank you.

09:26:09 18 A. I don't believe I presented evidence about how ASUSTeK

09:26:18 19 uses this claim.

09:26:19 20 BY MR. JOSHI:

09:26:19 21 Q. Okay. Now let's talk about other human beings in the

09:26:25 22 United States that may not work for ASUSTeK. Let's assume

09:26:30 23 they don't work for ASUSTeK. I also don't believe you

09:26:33 24 presented any evidence that any human being has directly

09:26:37 25 infringed Claim 1 of the '435 patent; is that correct?

09:26:42 1 MR. SABA: Objection, Your Honor. Argumentative,  
09:26:47 2 misleading, mischaracterizes the previous testimony.

09:26:50 3 THE COURT: Overruled.

09:26:51 4 MR. SABA: Thank you.

09:26:52 5 A. I believe yesterday I said in my personal experience,  
09:26:55 6 I've used this feature.

09:26:57 7 BY MR. JOSHI:

09:26:58 8 Q. How about other than yourself? Anyone that you  
09:27:00 9 mentioned yesterday?

09:27:04 10 A. I think everyone I know uses this feature.

09:27:07 11 Q. But you did not identify any human being yesterday or  
09:27:10 12 this morning, correct?

09:27:16 13 A. Other than myself? No.

09:27:17 14 Q. Yes.

09:27:34 15 Okay. So now, Dr. Ducharme, I would like to go to  
09:27:37 16 the selecting limitation of Claim 1.

09:27:42 17 MR. JOSHI: Andrew, would you please zoom in on  
09:27:45 18 the selecting limitation?

09:27:47 19 BY MR. JOSHI:

09:27:57 20 Q. As I understand it, Dr. Ducharme, it is your opinion  
09:28:01 21 that ASUSTeK's products infringe Limitation (b); is that  
09:28:06 22 correct?

09:28:06 23 A. Yes.

09:28:06 24 Q. And I'll refer to this as the selecting step, is that  
09:28:15 25 fair, because it begins with selecting?

09:28:17 1 A. Yes, that's fine.

09:28:18 2 Q. So let's read this: Selecting to independently change  
09:28:23 3 the hue. Let's stop there.

09:28:27 4 Are you aware that the Court has given us a  
09:28:30 5 definition for hue?

09:28:33 6 A. Yes.

09:28:33 7 Q. Does the definition of hue include brightness,  
09:28:41 8 literally? Let me -- let me withdraw that question and  
09:28:46 9 start again.

09:28:48 10 The definition of hue that the Court has given us,  
09:28:52 11 does it include the word "brightness" in it?

09:28:59 12 A. I don't believe so, no.

09:29:04 13 Q. You have a binder, I believe, your counsel had given  
09:29:11 14 you. Are there definitions in that binder? I don't want  
09:29:14 15 you to guess. Feel free to ask for a copy if you like.

09:29:28 16 A. I -- I don't believe I have a copy of the Court's  
09:29:31 17 constructions. I may refer to them in my report, but it  
09:29:36 18 might take me a minute.

09:29:39 19 Q. By all means, whatever you like. If you want your  
09:29:42 20 counsel to give you a copy, I'm fine with that. If you  
09:29:44 21 want to look at your report, but I don't want you to speak  
09:29:48 22 from memory.

09:29:49 23 MR. SABA: Your Honor, if Mr. Joshi wants to  
09:29:51 24 examine the witness, he can provide the documents he's  
09:29:54 25 referring to.

09:29:55 1 THE COURT: Do you have a copy, Mr. Joshi?

09:29:59 2 MR. JOSHI: I do, Your Honor.

09:30:15 3 MR. BENNETT: I've got one here, Your Honor, just

09:30:19 4 for sake of time.

09:30:19 5 THE COURT: That's fine.

09:30:23 6 MR. BENNETT: May I approach?

09:30:24 7 THE COURT: Yes, you may.

09:30:29 8 THE WITNESS: Thanks.

09:30:31 9 BY MR. JOSHI:

09:30:46 10 Q. If it helps, I'll refer you to --

09:30:48 11 A. That would be great.

09:30:51 12 Q. -- to Page 10 of 44 of the order. Ready?

09:31:22 13 A. I'm on Page 10.

09:31:23 14 Q. Okay. And there's a definition of hue provided to us

09:31:27 15 by the Court?

09:31:28 16 A. Yes.

09:31:28 17 Q. Do you see the word "brightness" there anywhere?

09:31:32 18 A. No.

09:31:32 19 Q. Do you see the word "gain" there anywhere?

09:31:37 20 A. No.

09:31:38 21 Q. Below the definition of hue, there's a definition of

09:31:45 22 saturation, correct?

09:31:46 23 A. Yes.

09:31:46 24 Q. Do you see the word "brightness" in that definition

09:31:50 25 anywhere?

09:31:50 1 A. The word "brightness" does not appear in this.

09:31:54 2 Q. Does the word "gain" appear in that definition

09:31:58 3 anywhere?

09:31:58 4 A. No.

09:31:59 5 Q. In compare -- so you can put that away for the moment.

09:32:02 6 In comparing ASUS's products with Claim 1, are you

09:32:06 7 relying on either brightness or gain for your infringement

09:32:12 8 argument?

09:32:12 9 A. Can you define the word "gain"?

09:32:21 10 Q. I cannot. And it doesn't matter what I think gain is.

09:32:28 11 But I'm asking you if you have relied on gain --

09:32:32 12 let's me -- let's take a step back.

09:32:33 13 You're familiar with what gain is, correct?

09:32:37 14 A. Yes.

09:32:37 15 Q. Okay. And you know what gain is in the context of the

09:32:42 16 technology we're talking about in this case?

09:32:44 17 A. It's not a very specific term.

09:32:48 18 Q. Okay. Have you relied on gain for making your

09:32:54 19 infringement position in this case?

09:32:56 20 A. I can't answer that question unless I know specifically

09:33:15 21 with what you're referring gain to be.

09:33:18 22 Q. All right.

09:33:20 23 A. Because "gain" is a very general word.

09:33:22 24 Q. But gain doesn't appear in the Court's definition of

09:33:32 25 either hue or saturation, correct?

09:33:34 1 A. That's correct.

09:33:34 2 Q. To form your infringement opinions about ASUS's  
09:33:43 3 products, have you relied on the brightness feature of  
09:33:48 4 ASUS's products?

09:33:51 5 A. The -- can you clarify the brightness function?

09:34:00 6 Q. Well, what I'm trying to clarify is whether or not you  
09:34:06 7 have followed the claim -- the Court's definitions. Have  
09:34:11 8 you followed the Court's definition of hue?

09:34:14 9 A. Yes.

09:34:14 10 Q. Have you followed the Court's definition of saturation?

09:34:17 11 A. Yes.

09:34:17 12 Q. And those definitions do not recite the words "gain" or  
09:34:22 13 "brightness," correct?

09:34:24 14 A. I believe I've answered that already, but, yes, they...

09:34:29 15 Q. Okay. All right. We may come back to that, but let's  
09:34:41 16 proceed for now.

09:34:46 17 MR. JOSHI: Andrew, may I please have  
09:34:53 18 Plaintiff's 14A brought up? And please go to the very last  
09:34:56 19 page where they have the user interface.

09:35:05 20 BY MR. JOSHI:

09:35:16 21 Q. Okay. Now, Dr. Ducharme, the selecting limitation that  
09:35:22 22 we looked at, it calls for selecting an individual color,  
09:35:26 23 correct?

09:35:26 24 A. Yes.

09:35:28 25 Q. And the Court has given us a definition for individual

09:35:31 1 color, correct?

09:35:32 2 A. Yes.

09:35:32 3 Q. And that definition -- the definition of individual

09:36:04 4 color is linear combination of colors or color components;

09:36:10 5 is that right?

09:36:11 6 A. Yes.

09:36:11 7 Q. And have you followed that definition in forming your

09:36:16 8 infringement opinions?

09:36:17 9 A. Yes.

09:36:17 10 Q. Okay. Now, take a look at this user interface. This

09:36:25 11 should be real familiar to everybody by now, right?

09:36:28 12 A. Yes.

09:36:29 13 Q. Okay. And this is a user interface for an ASUS 6-axis

09:36:33 14 product?

09:36:33 15 A. Yes.

09:36:34 16 Q. Okay. So the way this user interface is used is the

09:36:39 17 user would first select advanced setting, correct?

09:36:43 18 A. Yes.

09:36:44 19 Q. Then the user would select either 6-axis hue or 6-axis

09:36:50 20 saturation or gain or offset, correct?

09:36:55 21 A. That's correct.

09:36:55 22 Q. Now, at least in this menu, gain -- gain, g-a-i-n, is

09:37:02 23 shown as something separate from hue and saturation,

09:37:06 24 correct?

09:37:06 25 A. Yes.

09:37:06 1 Q. Okay. And once the user selects hue, then the user  
09:37:10 2 selects a color, RGBCMY, correct?  
09:37:15 3 A. Yes.  
09:37:16 4 Q. And once that color is selected, then the user selects  
09:37:19 5 a value, which you testified yesterday ranges from 0 to  
09:37:29 6 100, correct?  
09:37:30 7 A. Yes.  
09:37:31 8 Q. Okay. So now let's talk about the Court's definition  
09:37:34 9 of individual color, linear combination of colors and color  
09:37:38 10 components.  
09:37:39 11                   Would you agree that red is a color component?  
09:37:46 12 A. Yes.  
09:37:46 13 Q. And green is a color component?  
09:37:49 14 A. Yes.  
09:37:49 15 Q. And blue is a color component?  
09:37:51 16 A. Yes.  
09:37:52 17 Q. And those colors can be -- those color components can  
09:37:56 18 be combined in different quantities to form a color?  
09:37:59 19 A. Yes.  
09:38:00 20 Q. Okay. So when a user selects red in this menu, the  
09:38:12 21 user hasn't simply selected just red as an individual color  
09:38:18 22 but various colors in which red is a component, correct?  
09:38:21 23                   MR. SABA: Your Honor, I'm going to object. I  
09:38:23 24 believe that -- this is misleading against the Court's  
09:38:28 25 claim construction order.

09:38:29 1 MR. JOSHI: I don't believe so.

09:38:30 2 THE COURT: Overruled.

09:38:34 3 A. I'm sorry, can you repeat the question?

09:38:36 4 BY MR. JOSHI:

09:38:37 5 Q. Yes. So in this user interface, when a user selects

09:38:43 6 the color red, the user has selected a red component,

09:38:49 7 correct?

09:38:51 8 A. The user has selected the red component to adjust.

09:38:57 9 Q. Correct. And on the display screen -- how many pixels

09:39:03 10 are on a display screen?

09:39:05 11 A. Depends on the resolution. In the millions.

09:39:07 12 Q. Millions?

09:39:08 13 A. Sure.

09:39:08 14 Q. Okay. And each one of those pixels is formed by three

09:39:17 15 components, a red, a green, and a blue, correct?

09:39:21 16 A. Generally.

09:39:22 17 Q. Okay. Generally. These ones are?

09:39:24 18 A. Yes.

09:39:24 19 Q. Okay. So when a -- when a user selects red, he is

09:39:31 20 selecting red for all of those pixels, correct?

09:39:37 21 A. In this menu when the user selects red, they're

09:39:48 22 selecting the color to adjust.

09:39:49 23 Q. Yes. Wherever that color may be on the display?

09:40:01 24 A. I think that's fair to say.

09:40:06 25 Q. Okay.

09:40:07 1 A. That it's on the display.

09:40:08 2 Q. Okay.

09:40:09 3 A. The color that they're selecting to adjust is on the

09:40:12 4 display.

09:40:12 5 Q. Okay.

09:40:14 6 A. I believe that's correct.

09:40:14 7 Q. Okay. So there are millions of displays, but for the

09:40:19 8 sake of this conversation, let's just say there are a

09:40:19 9 hundred.

09:40:23 10 So if --

09:40:23 11 A. I'm sorry. A hundred what?

09:40:25 12 Q. Hundred pixels.

09:40:25 13 A. Okay. Thank you.

09:40:25 14 Q. Okay.

09:40:25 15 A. Yeah.

09:40:28 16 Q. So there's Pixel 1, which has some combination of red,

09:40:32 17 blue, and green, and there's Pixel 2 with some combination

09:40:34 18 of red, blue, and green, correct?

09:40:36 19 A. Yes.

09:40:36 20 Q. And then one red could be the highest amount

09:40:41 21 compared -- higher than green, higher than blue, and

09:40:44 22 another one, green could be higher, red could be in

09:40:49 23 between, blue could be less than that, right?

09:40:52 24 A. I believe I'm following, yes.

09:40:54 25 Q. Okay. And both of those pixels got selected by the

09:40:58 1 selection of this red?

09:40:59 2 A. No.

09:41:00 3 Q. Why not?

09:41:01 4 A. We're referring to Step (b) in Claim 1, correct?

09:41:10 5 Q. I'm referring to the product.

09:41:12 6 A. So in the product -- can you -- can you maybe not

09:41:19 7 rephrase but clarify your question?

09:41:20 8 Q. Yeah. Actually, let's start all over again. Now that

09:41:25 9 you know where I'm going with this, let's start again.

09:41:28 10 A. Okay.

09:41:28 11 Q. We agreed that on a display, there are millions of

09:41:33 12 pixels, and we say -- we also agree that each pixel

09:41:37 13 contains a red component, a green component, and a blue

09:41:42 14 component, correct?

09:41:43 15 A. Yes.

09:41:43 16 Q. And the way different colors are created is by

09:41:47 17 adjusting the amounts of those three for each pixel,

09:41:51 18 correct?

09:41:51 19 A. Yes.

09:41:52 20 Q. Okay. When a user selects red, he or she has selected

09:42:01 21 red for all the pixels on the display, correct?

09:42:05 22 A. I reject the premise of the question because the user

09:42:20 23 isn't selecting pixels here.

09:42:20 24 Q. Uh-huh.

09:42:23 25 A. They're selecting colors to adjust.

09:42:25 1 Q. That's fair. Okay.

09:42:27 2 A. And -- yeah, okay.

09:42:28 3 Q. So now let's say here a user has selected R and

09:42:33 4 selected the value 50.

09:42:36 5 A. Okay.

09:42:36 6 Q. So let's go to one pixel where -- yesterday you used

09:42:44 7 the demonstrative where the values range from 0 to 100. Do

09:42:49 8 you recall that?

09:42:49 9 A. Yep, I do.

09:42:50 10 Q. Okay. So let's say there's a pixel where red is 100

09:42:54 11 and green is a smaller amount and then blue is a smaller

09:42:57 12 amount. This change is going to affect that -- will affect

09:43:00 13 that pixel, correct?

09:43:01 14 A. Yes.

09:43:01 15 Q. Okay. And let's say there's another pixel -- we're not

09:43:07 16 talking about the claim. We're talking the product. And

09:43:11 17 there's another pixel where red is not a hundred, it's some

09:43:15 18 other number, and then there's blue and then there's green

09:43:17 19 of whatever numbers, this will affect that pixel also,

09:43:21 20 correct?

09:43:22 21 A. Yes.

09:43:22 22 Q. Okay.

09:43:24 23 A. Yes.

09:43:25 24 Q. Okay. So now we agree that when a red is selected in

09:43:32 25 this menu, red -- multiple pixel -- multiple pixels with

09:43:41 1 red are affected by the change?

09:43:49 2 A. Multiple -- multiple pixels containing red are affected

09:43:56 3 by this change, yes, I agree.

09:43:58 4 Q. Okay. All right. And the purpose of a pixel -- of any

09:44:11 5 pixel is to create an individual color by using red, green,

09:44:19 6 and blue values; is that correct?

09:44:20 7 A. Yes.

09:44:22 8 Q. Okay. So if there is one amount of red in Pixel A and

09:44:31 9 a different amount of red in Pixel B, those two pixels are

09:44:36 10 going to create different individual colors, correct?

09:44:40 11 A. Yes.

09:44:40 12 Q. Okay. So now with that in mind, let's go back to --

09:44:47 13 MR. JOSHI: Claim 1, please.

09:44:50 14 BY MR. JOSHI:

09:45:00 15 Q. Okay. We'll stay at 1(b).

09:45:03 16 Now, this limitation says: Selecting to

09:45:06 17 independently change the hue or the saturation of an

09:45:09 18 individual color.

09:45:13 19 Has the Court given us a definition of "individual

09:45:16 20 color" for the selecting step?

09:45:18 21 A. I'm sorry, can you --

09:45:22 22 Q. Yes.

09:45:23 23 A. Just I wasn't -- I didn't quite follow it.

09:45:25 24 Q. Oh, that's fine. This is a dense matter, and I'm

09:45:28 25 willing to restart if you want.

09:45:30 1 But has the Court -- strike that.

09:45:34 2 With respect to Limitation 1(b) of Claim 1, has

09:45:38 3 the Court given us a definition of individual color?

09:45:44 4 A. Yes.

09:45:45 5 Q. What is that definition?

09:45:47 6 A. A linear combination of colors or color components.

09:45:50 7 Q. Has the Court given us an additional definition just

09:45:54 8 for Section B? I can refer you to the document if you

09:45:59 9 like.

09:46:00 10 A. Yep, sure.

09:46:00 11 Q. Okay. So in the document your counsel handed you, I

09:46:07 12 would like you to go to the bottom of Page 13 of 44.

09:46:24 13 A. I'm at the bottom of Page 13.

09:46:30 14 Q. Okay. And tell me what the Court says there about --

09:46:39 15 well, no, don't tell me what the Court says. But what is

09:46:43 16 that additional definition of individual color for the

09:46:48 17 selecting step? It needs to be what? It needs to be an

09:47:11 18 exact individual color, doesn't it?

09:47:13 19 MR. SABA: Your Honor, I'm going to object to the

09:47:19 20 sidebar.

09:47:19 21 MR. JOSHI: That will interrupt my flow, Your

09:47:20 22 Honor.

09:47:20 23 THE COURT: Is that a question?

09:47:21 24 MR. JOSHI: Yes.

09:47:22 25 THE COURT: What is the question?

09:47:25 1 MR. JOSHI: The individual color needs to be an  
09:47:29 2 exact individual color, correct?

09:47:32 3 MR. SABA: Your Honor, may we approach?

09:47:34 4 MR. JOSHI: Your Honor, that interrupts my exam.

09:47:39 5 THE COURT: Well, sidebars interrupt the -- your  
09:47:47 6 exam. I mean, that's just a function of it.

09:47:50 7 Mr. Saba, is it necessary?

09:47:52 8 MR. SABA: I just want to make sure that we're not  
09:47:55 9 going to get into a line of questioning that contradicts  
09:47:59 10 the Court's claim construction.

09:48:00 11 MR. JOSHI: That might be my only question about  
09:48:01 12 this, Your Honor.

09:48:02 13 THE COURT: All right. Let's move along.

09:48:07 14 Mr. Saba, if you think we are, you can object.

09:48:11 15 MR. SABA: Thank you, Your Honor.

09:48:17 16 BY MR. JOSHI:

09:48:18 17 Q. Do you understand my question, Dr. Ducharme?

09:48:22 18 A. Does the -- I'm not sure. Can you repeat just the  
09:48:45 19 question?

09:48:45 20 Q. Yes.

09:48:46 21 A. I think I've lost it.

09:48:48 22 Q. Yes, no problem. That's very understandable.

09:48:51 23 Look at the bottom of Page 13 of 44 of the Court's  
09:48:56 24 claim construction order.

09:48:57 25 A. Yes.

09:48:58 1 Q. Do you understand that in this selecting step that  
09:48:59 2 we're looking at, the individual color must be an exact  
09:49:05 3 individual color?

09:49:13 4 A. On the bottom of Page 13 in this construction order, it  
09:49:17 5 recites that the Defendants suggested that it be limited to  
09:49:20 6 an exact individual color. That's what I see on the bottom  
09:49:21 7 of the page.

09:49:21 8 Q. What's the last phrase of that sentence?

09:49:24 9 A. And they are correct.

09:49:26 10 Q. So now, based on what we just discussed, the menu where  
09:49:36 11 the selection of R affected multiple pixels and multiple  
09:49:41 12 individual colors and this definition of exact, do you  
09:49:47 13 agree that ASUSTeK does not infringe Claim 1?

09:49:51 14 A. No.

09:49:51 15 Q. Why not?

09:49:52 16 A. The step requires that you select an independent color  
09:50:14 17 to change a red value of the highest -- you described it as  
09:50:19 18 having the highest amount red, 100 percent, and blue and  
09:50:24 19 green would be 0 percent. On that menu that you showed,  
09:50:28 20 those are the exact colors that you're able to choose.  
09:50:32 21 You're able to choose, you know, red of 100 percent, blue  
09:50:37 22 and green, 0 percent.

09:50:39 23 Q. Okay. But what we're talking about there is the red  
09:50:43 24 component and a green component and a blue component.  
09:50:46 25 Those are not individual colors, correct? Individual

09:50:49 1 colors are created from those components.

09:50:53 2 A. My understanding of what you asked was does Step (b)  
09:51:02 3 require that the user is able to select an exact color.

09:51:06 4 Q. What's --

09:51:07 5 A. Red of 100 percent, green and blue of 0 percent is an  
09:51:12 6 exact color by your previous definition, and that's -- that  
09:51:17 7 is what ASUS is able to select in this step. And so I  
09:51:22 8 believe it still infringes.

09:51:23 9 Q. Let's break that down a bit. Let's start with where we  
09:51:27 10 agree. We agree that the selecting step requires selection  
09:51:31 11 of an exact individual color. We agree on that?

09:51:34 12 A. Yes.

09:51:35 13 Q. Okay. And we also agree that an individual color is  
09:51:40 14 made from a combination of red, blue, and green, correct?

09:51:53 15 A. Yes.

09:51:53 16 Q. Okay.

09:51:53 17 MR. JOSHI: With that, let's go back to the user  
09:51:57 18 interface. It's Exhibit 14, at the bottom.

09:51:59 19 BY MR. JOSHI:

09:52:04 20 Q. Okay. So we come here, and the -- this user has  
09:52:10 21 selected the color red. Do you see that?

09:52:11 22 A. Yes.

09:52:12 23 Q. And they have selected it at a value of 50?

09:52:15 24 A. Yes.

09:52:15 25 Q. But that value is for the hue. It's not how much

09:52:24 1 amount goes into each pixel, correct?

09:52:30 2 A. Yes.

09:52:30 3 Q. Okay. So let's say there are two different pixels.

09:52:35 4 The hue value of red for each of those pixels will be 50,

09:52:41 5 correct?

09:52:42 6 A. Can you clarify that? I'm sorry. I don't follow.

09:52:48 7 Q. So there are two -- let's pick two pixels from the

09:52:52 8 display.

09:52:53 9 A. Em-hmm.

09:52:53 10 Q. We both agree each has a red component in it, correct?

09:52:57 11 A. Yes.

09:52:57 12 Q. And this user has said that I want the hue value of red

09:53:01 13 across the screen to be 50, meaning both of those pixels

09:53:04 14 have a hue value of 50 for red, correct?

09:53:07 15 A. Yes.

09:53:07 16 Q. Okay. But that doesn't mean the quantity of red is the

09:53:12 17 same? You could have 255 in one and 200 in another?

09:53:19 18 A. Yes.

09:53:20 19 Q. So the quantities are different, but the hue amount is

09:53:23 20 the same?

09:53:23 21 A. Yes.

09:53:24 22 Q. But the difference in the quantities is going to cause

09:53:27 23 each pixel to create a different individual color, correct?

09:53:31 24 A. When is it going to?

09:53:38 25 Q. When the display is used.

09:53:43 1 A. I'm sorry. I don't understand the question.

09:53:45 2 Q. Let's start again. That's fine. We can start as many

09:53:49 3 times as you want. The user one here selected the color

09:53:53 4 red and selected the value of 50 for hue for red, correct?

09:53:57 5 A. Mm-hmm.

09:53:57 6 Q. So now all across the display, millions of pixels where

09:54:02 7 there is a red component, that hue is 50?

09:54:05 8 A. Yes.

09:54:09 9 Q. Okay. So that's uniform. But the quantity -- the

09:54:13 10 quantity of red is different in different pixels, correct?

09:54:16 11 A. Yes.

09:54:17 12 Q. And that quantity is what decides what individual color

09:54:22 13 is generated by each pixel, correct?

09:54:25 14 A. Yes.

09:54:25 15 Q. And if the quantity is different, then the individual

09:54:29 16 color is different?

09:54:34 17 A. Yes.

09:54:35 18 Q. Okay. So now do you agree with me that ASUS does not

09:54:39 19 infringe because it does not practice Limitation 1(b) of

09:54:45 20 Claim 1?

09:54:47 21 A. What you described, the different colors and hue and --

09:54:54 22 all of that was correct. But it's not what's described in

09:54:59 23 Claim 1 of this patent. That's not the process by which

09:55:05 24 the video is received, the colors are selected and allowed

09:55:14 25 to be adjusted, how those pixels are then chosen and

09:55:18 1 adjusted and then redisplayed. That's -- you're -- you're  
09:55:24 2 not describing this claim in your example, to the best of  
09:55:28 3 my ability to understand your question.

09:55:31 4 Q. Okay. Well, let's take it a little bit slower. We had  
09:55:35 5 a discussion earlier that the claim is divided into  
09:55:39 6 Limitations (a), (b), (c), (d), and (e)?

09:55:42 7 A. Yes.

09:55:42 8 Q. Right. And I believe you agree -- and you correct me  
09:55:45 9 if I'm wrong, you agreed that if ASUS does not infringe any  
09:55:51 10 one of them, like 1(a) or 1(b), then it does not infringe  
09:55:56 11 the whole claim? We agreed on that, correct?

09:55:58 12 A. Yes.

09:55:58 13 Q. All right. So now -- and do you also agree that two  
09:56:02 14 individual colors are not exact individual color, singular?

09:56:11 15 MR. SABA: Your Honor, I'm going to object to  
09:56:14 16 misleading.

09:56:15 17 THE COURT: Can you rephrase the question?

09:56:17 18 MR. JOSHI: Sure.

09:56:26 19 BY MR. JOSHI:

09:56:26 20 Q. So we agree that --

09:56:27 21 MR. JOSHI: Go back to that limitation, Andrew.  
09:56:31 22 I'm sorry, I can't -- I can't remember the limitation.

09:56:33 23 BY MR. JOSHI:

09:56:33 24 Q. Okay. So I believe we agree that in this limitation,  
09:56:36 25 an individual color refers to an exact individual color?

09:56:41 1 You recall we had that discussion?

09:56:42 2 A. Yes.

09:56:45 3 Q. Okay. And would you agree with me that an exact

09:56:47 4 individual color is not two, three, four, or five

09:56:51 5 individual colors?

09:56:55 6 A. That an exact color is not?

09:56:57 7 Q. Yes.

09:56:58 8 A. Yes, I would agree with that.

09:57:00 9 Q. Okay. So if ASUS's display is producing multiple

09:57:07 10 individual colors and this claim calls for an exact

09:57:10 11 individual colors, why is ASUS infringing the patent?

09:57:13 12 A. The selecting here is -- refers to the slider on the

09:57:25 13 screen. It's not refer -- referring to the operation of

09:57:29 14 selecting these pixels in the monitor. They're -- they're

09:57:35 15 different concepts.

09:57:37 16 This claim limitation -- the ASUS -- the accused

09:57:45 17 ASUS products infringe on this limitation because very

09:57:48 18 plainly they offer you an On-Screen-Display with a slider.

09:57:52 19 And when you move that slider, that's the delta value

09:57:56 20 that -- that the user has chosen to -- you know, that --

09:58:00 21 that color, red, green, blue, cyan, yellow, magenta, they

09:58:06 22 have chosen to adjust that color.

09:58:08 23 So all of the ASUS -- accused ASUS products allow

09:58:12 24 the user to select a color to change. In my opinion, ASUS

09:58:19 25 products infringe this claim because they offer that

09:58:22 1 opportunity to make this adjustment.

09:58:27 2 Q. Okay. I don't understand what you're saying. But when

09:58:31 3 a user goes and makes a user interface selection -- and

09:58:35 4 that has a purpose, not selecting just for the heck of it,

09:58:38 5 you want to adjust something, correct?

09:58:42 6 A. Yes.

09:58:42 7 Q. Okay. And in this case what we are trying to adjust

09:58:46 8 are individual colors, correct?

09:58:47 9 A. Yes.

09:58:48 10 Q. Okay. But to adjust an individual color, you first

09:58:51 11 have to select an individual color. You can't adjust it

09:58:53 12 without selecting it first, correct?

09:58:55 13 A. The selection --

09:59:00 14 Q. Yeah.

09:59:01 15 A. -- is the choice you make with the slider that you

09:59:05 16 choose.

09:59:05 17 Q. Yes, sir. Yes. But the slider is selecting a hue or a

09:59:11 18 saturation for a color wherever it might be on a display,

09:59:16 19 correct?

09:59:17 20 A. Slider -- the only purpose of the slider is to record

09:59:22 21 the user's desired delta value, how much they want to

09:59:26 22 change the color. That's all the slider does.

09:59:29 23 Q. Right. And it doesn't do it for one individual color.

09:59:34 24 It does it for all the individual colors on the display?

09:59:37 25 A. The slider doesn't have any part of that in the method.

09:59:43 1 Q. Okay. Let me -- let me test that a little bit. Do you  
09:59:48 2 see the verbiage there: By selecting an independent color  
09:59:48 3 hue control delta value.

10:00:00 4 Do you see that?

10:00:01 5 A. Yes.

10:00:02 6 Q. And in our example that we looked at on that user  
10:00:06 7 interface, that delta value would be 50, correct?

10:00:09 8 A. Yes.

10:00:10 9 Q. So why do you say that has nothing to do with this  
10:00:13 10 claim?

10:00:14 11 A. I don't understand your question. I think that's  
10:00:18 12 exactly what I was saying happens.

10:00:20 13 Q. Okay. All right. So the user selected 50, so they  
10:00:29 14 selected the delta value and they selected it for the color  
10:00:32 15 red -- the color component red, correct?

10:00:35 16 A. Yes.

10:00:35 17 Q. And that color component red is all over the display in  
10:00:40 18 various pixels creating individual colors, correct?

10:00:44 19 A. Absolutely.

10:00:45 20 Q. And that color component is all over the display,  
10:00:49 21 creating different individual colors, correct?

10:00:52 22 A. Correct.

10:00:52 23 Q. And different individual colors is not an exact  
10:00:57 24 individual color, correct?

10:01:01 25 A. Just that last part, can you just state that again?

10:01:06 1 Q. Okay. So let's -- let's use your terms, okay? What  
10:01:10 2 you did yesterday is you gave each individual color three  
10:01:17 3 digits, R, G, and B. So, for example, you said one  
10:01:23 4 individual color would be 100, 50, 25. I'm just making  
10:01:27 5 that up, red, green and blue. Would that define an exact  
10:01:31 6 color?

10:01:32 7 A. What were the numbers again?

10:01:33 8 Q. Okay. Let me -- let me put up your slide on the Elmo.

10:01:40 9 MR. JOSHI: May I please switch to the Elmo?

10:01:43 10 BY MR. JOSHI:

10:01:58 11 Q. All right. And now --

10:02:02 12 THE COURT: Mr. Joshi, you have to have a  
10:02:03 13 microphone if you're away.

10:02:05 14 MR. JOSHI: Sorry, Your Honor.

10:02:09 15 BY MR. JOSHI:

10:02:10 16 Q. Okay. So this is your slide. You used it yesterday?

10:02:14 17 A. Yeah, it's a -- it's a printed version, but, yes.

10:02:18 18 Q. Okay. Look at the very first color you're showing.

10:02:21 19 You say a combination of red, 100; green, 0; and blue, 0,  
10:02:27 20 makes for an individual color.

10:02:28 21 Correct?

10:02:29 22 A. Yes.

10:02:29 23 Q. Okay. And on the other side, a combination of  
10:02:35 24 red, 100; green, 0; blue, 100, makes for a different  
10:02:40 25 individual color, correct?

10:02:41 1 A. That's correct.

10:02:41 2 Q. All right. And now in the middle, a combination of

10:02:47 3 red, 0; green, 0; and blue, 100, makes for yet another

10:02:52 4 individual color, correct?

10:02:53 5 A. Yes.

10:02:54 6 Q. Okay. So now the -- the value of red you have shown

10:02:58 7 is 0, but you could have just as easily said 50 or 25

10:03:02 8 or 35, correct?

10:03:04 9 A. I agree.

10:03:05 10 Q. And that would -- and that would have created yet

10:03:08 11 another individual color, correct?

10:03:09 12 A. Yes.

10:03:09 13 Q. Okay. So now let's get back to the conversation. So

10:03:13 14 we -- the user selected red, selected hue or saturation,

10:03:25 15 and selected 50, okay? That has nothing to do with these

10:03:29 16 numbers. These are quantities, correct?

10:03:31 17 A. Yes.

10:03:31 18 Q. Okay. So -- so she went in, she selected that number.

10:03:35 19 Now every red pixel on that entire screen has a hue at --

10:03:39 20 value of 50, correct?

10:03:41 21 A. A hue what value? I didn't hear the word.

10:03:44 22 Q. In the ASUS user interface for the 6-axis products --

10:03:48 23 A. Yes.

10:03:48 24 Q. -- when the user selected red and 50, now every single

10:03:53 25 pixel on that screen will have a hue value of 50 for the

10:03:58 1 red component, correct?

10:04:02 2 A. Yes, because that's the current setting. So we can

10:04:10 3 assume previously that that slider has been moved --

10:04:10 4 Q. Yes.

10:04:13 5 A. -- and all of the colors have been adjusted and so

10:04:16 6 right now, yes, they all have that corresponding hue value.

10:04:21 7 Q. Okay. So, for example, at the bottom, that one pixel

10:04:25 8 which has an R of 100, green of 0, and blue of 100 --

10:04:30 9 A. Yes.

10:04:30 10 Q. -- that would have a hue value of 50 for red?

10:04:56 11 A. I don't know if you can think of it that way. When you

10:05:00 12 have a test pattern like this, it's created on some kind of

10:05:04 13 calibrated machine or its digitally created, right, so

10:05:08 14 we're going to display it on a computer. And you're --

10:05:11 15 you're choosing that the formatting of the digital

10:05:15 16 information has these values.

10:05:17 17 And so now when it's displayed on a monitor, as

10:05:20 18 you suggest with a hue value of 50, that's a different --

10:05:24 19 that's a different thing. The -- these numbers don't

10:05:29 20 necessarily relate to that anymore.

10:05:31 21 Q. Let's forget about these numbers. I was just using

10:05:34 22 them as a way of example.

10:05:36 23 A. Sure.

10:05:37 24 Q. But what I'm saying is when -- when the user, when she

10:05:40 25 selected a hue value of 50, anywhere red appears on that

10:05:46 1 screen is going to have a hue value of 50, correct?

10:05:49 2 A. I don't know. It doesn't -- I'm not sure how to answer

10:05:58 3 that question. It's --

10:06:00 4 Q. You don't know? So let me start again.

10:06:04 5 MR. JOSHI: Can we go back to that user interface

10:06:09 6 again?

10:06:16 7 MR. OLIVER: It's on the --

10:06:17 8 MR. JOSHI: Oh. May we please switch back? Thank

10:06:20 9 you. Thanks.

10:06:21 10 BY MR. JOSHI:

10:06:21 11 Q. Okay. So when you gave your infringement opinion

10:06:25 12 yesterday, this user interface was a part of your analysis,

10:06:29 13 correct?

10:06:30 14 A. Absolutely.

10:06:31 15 Q. Okay. And so now in the selecting -- in the selecting

10:06:35 16 phase, the user has selected 6-axis hue, she has selected

10:06:43 17 the color red, and she has selected the value of 50 for the

10:06:47 18 hue, correct?

10:06:48 19 A. Yes.

10:06:49 20 Q. Okay. And that selection is not for some pixels, it's

10:06:54 21 for all the pixels on the display, correct?

10:06:56 22 A. Yes.

10:06:57 23 Q. Okay. And we talked about millions of pixels on a

10:07:04 24 display, each having a red component.

10:07:05 25 A. Yes.

10:07:06 1 Q. Okay. So this value is for wherever that red component  
10:07:09 2 is on the display, correct?  
10:07:10 3 A. I believe that's correct.  
10:07:18 4 Q. Okay.  
10:07:19 5 A. It's -- I'll leave it at that.  
10:07:25 6 Q. Okay. And so then this -- this 50 value has nothing to  
10:07:29 7 do with the quantity of red in each pixel, correct? That's  
10:07:36 8 a different thing?  
10:07:38 9 A. Yeah, the quantity of the red, green, and blue in a  
10:07:42 10 pixel is defined by whatever it is you're displaying on it.  
10:07:46 11 I think that's where I'm having trouble with your saying  
10:07:51 12 it's all 50 or it's all --  
10:07:54 13 Q. Point very well taken. I think this is just a little  
10:07:56 14 bit -- I don't think you're trying to dodge the question.  
10:07:59 15 I think you're --  
10:08:01 16 A. I'm trying to very hard to answer your question.  
10:08:04 17 Q. I understand that. Okay. And we'll get there. It's  
10:08:07 18 just that these different slides have different numbers,  
10:08:09 19 and then we have to harmonize them.  
10:08:12 20 But anyway -- so now what we agree on is we have  
10:08:14 21 multiple pixels on a display where the hue value of red is  
10:08:20 22 the same, correct? That's what this setting does, makes  
10:08:23 23 it 50?  
10:08:31 24 A. I think I can agree if -- if we think -- yes, if we  
10:08:35 25 think of it -- that this is how the monitor is currently

10:08:39 1 set, so now whatever we display on it will display with  
10:08:44 2 those settings.

10:08:45 3 Q. Okay.

10:08:46 4 A. I think that's the way to think of it.

10:08:48 5 Q. Sure. She hasn't finished it, but let's say she  
10:08:52 6 finished, okay? So now the red component can be  
10:09:05 7 combined -- let me restart again.

10:09:07 8 The exact same red component can be combined with  
10:09:10 9 different values of greens and blues to create different  
10:09:14 10 individual colors. Would you agree with that?

10:09:16 11 A. Yes.

10:09:16 12 Q. All right. Let's -- we may come back to this, but I  
10:09:28 13 believe we don't infringe because of this. But let's move  
10:09:31 14 on.

10:09:31 15 MR. SABA: Your Honor, I'm going to object to the  
10:09:33 16 sidebar again.

10:09:34 17 THE COURT: Sustained.

10:09:35 18 MR. SABA: Your Honor, could we get an instruction  
10:09:38 19 for the jury?

10:09:38 20 THE COURT: The jury will ignore the last comment.

10:09:41 21 MR. SABA: Thank you, Your Honor.

10:09:42 22 THE WITNESS: Can I inquire about time to the  
10:09:45 23 break?

10:09:47 24 THE COURT: Mr. Joshi --

10:09:50 25 MR. JOSHI: Yeah, we can take a break.

10:09:52 1 THE COURT: That would be fine.

10:09:53 2 THE WITNESS: Thank you, Your Honor.

10:09:54 3 THE COURT: All right. Ladies and gentlemen of

10:09:55 4 the jury, we'll take a slightly early morning break at this

10:09:58 5 time. We'll be in recess about 15 minutes.

10:10:01 6 COURT SECURITY OFFICER: All rise for the jury.

10:10:03 7 (Jury out.)

10:10:03 8 (Recess.)

10:28:30 9 THE COURT: Okay. Is everyone ready?

10:28:32 10 MR. JOSHI: Your Honor, just -- I would like to do

10:28:35 11 source code in the next session.

10:28:36 12 THE COURT: Okay. So you'll move to seal the

10:28:39 13 courtroom when that happens. Anybody --

10:28:41 14 MR. JOSHI: I only have a couple of questions

10:28:43 15 before I do that, so we could do it now if you like.

10:28:46 16 THE COURT: We can just -- I mean, get through

10:28:48 17 your questions, move to seal the courtroom. We'll seal the

10:28:48 18 courtroom.

10:28:48 19 MR. JOSHI: Okay.

10:28:51 20 THE COURT: Anyone not subject to the protective

10:28:53 21 order can excuse themselves. And then when you get

10:29:02 22 finished with that section, move to unseal the courtroom

10:29:06 23 and I'll do that and we'll let anyone else back in.

10:29:10 24 MR. JOSHI: Thank you, Your Honor.

10:29:10 25 THE COURT: Any questions about that?

10:29:13 1 MR. JOSHI: No.

10:29:14 2 MR. OLIVER: Do the corporate representatives get

10:29:18 3 to stay if they haven't signed the protective order?

10:29:19 4 THE COURT: Did the parties discuss that?

10:29:21 5 MR. BENNETT: It's not our source code,

10:29:23 6 Your Honor, so I don't have a real interest in that. I

10:29:26 7 can't give them advice about how to comply with the order.

10:29:31 8 I mean, we're going to excuse our corporate rep because --

10:29:36 9 THE COURT: The safest thing to do is just to

10:29:38 10 excuse him. That's fine.

10:29:40 11 Let's have the jury brought in.

10:29:45 12 MR. BENNETT: Your Honor, we have an issue that

10:29:47 13 needs raising. We can wait until a break, but it's a

10:29:49 14 mistrial problem.

10:29:49 15 THE COURT: Okay. Well, let's hear it now if it

10:29:53 16 relates to this witness's testimony.

10:29:54 17 MR. BENNETT: It does. We have obligations to

10:29:56 18 object. I understand that. But as lawyers in the court,

10:29:57 19 we also have, as officers of the court, an obligation to

10:30:01 20 follow Court orders.

10:30:01 21 THE COURT: Sure.

10:30:02 22 MR. BENNETT: Mr. Joshi had my witness read

10:30:04 23 directly from the claim construction order and bolster his

10:30:10 24 side after he told the Court he had only the pending

10:30:13 25 question to ask about that. We objected. He said: I have

10:30:17 1 one question. And he asked two. And the question that he  
10:30:20 2 asked was: What does it say? Defendants, they are  
10:30:22 3 correct. He had my expert read that directly in violation  
10:30:26 4 of the claim construction order.

10:30:28 5 So, once again, ASUS seems like they've won this  
10:30:31 6 trial. They've violated the claim construction order by  
10:30:34 7 reading directly from it in front of the jury in violation  
10:30:38 8 of the Court's order on page 44.

10:30:41 9 So the jury is left with the misimpression that  
10:30:43 10 the Court has endorsed the theory without the full rest of  
10:30:47 11 the page. If you continue on to the next part of the page:  
10:30:50 12 To the extent Defendants argue Claim 1's identifying step  
10:30:54 13 is limited to identifying input image pixels -- they have  
10:30:59 14 the exact -- this is the language Mr. Joshi focused on --  
10:31:01 15 the exact individual color previously selected -- they are  
10:31:05 16 incorrect is what the Court said. Of course, he didn't  
10:31:08 17 have my witness read that part. The jury has been  
10:31:12 18 misinformed by an officer of the Court at his behest after  
10:31:17 19 he told the Court he was going to ask the pending question.

10:31:21 20 We were all misled, and that is severely  
10:31:23 21 prejudicial. So we ask for a mistrial to preserve that  
10:31:27 22 error. If the Court denies that, we ask for a curative  
10:31:30 23 instruction when we get up on redirect for the Court to  
10:31:31 24 tell the jury it was a violation and that to cure that  
10:31:35 25 violation, we are going to get to explore the other parts

10:31:38 1 where the Court says the Defendants were incorrect and that  
10:31:42 2 bears directly on the testimony elicited from our expert.  
10:31:44 3 It is severely prejudicial because of its source, as well.  
10:31:47 4 All he did was read words on a page.

10:31:50 5 So for all of those reasons, we move for a  
10:31:54 6 mistrial, and in the alternative, for a curative  
10:31:57 7 instruction on redirect.

10:31:58 8 MR. JOSHI: Your Honor, that -- I don't believe  
10:32:00 9 that happened. I was very, very careful. I been thinking  
10:32:04 10 about this since yesterday. I don't want to violate this  
10:32:07 11 order. So after Mr. Saba agreed to give him the order, all  
10:32:12 12 I wanted him -- was for him to have it. And then --

10:32:16 13 THE COURT: Well, you could have taken the terms  
10:32:18 14 yourself, Mr. Joshi. So, you know, I don't know why you  
10:32:22 15 didn't do that. You had to rely on them to provide, you  
10:32:25 16 know, a copy of it. I did -- I was completely perplexed by  
10:32:31 17 what you were doing.

10:32:32 18 MR. JOSHI: Well, Your Honor, I didn't ask him to  
10:32:34 19 read it. He actually read it, but then he didn't complete  
10:32:37 20 the sentence. He just said it looks like just the  
10:32:41 21 Defendants offered it. I didn't want him to read that. I  
10:32:43 22 just wanted him to understand that --

10:32:45 23 THE COURT: He did read the part where it says --  
10:32:47 24 where the order says Defendants are correct. That did come  
10:32:51 25 in, and I heard that.

10:32:52 1 I'm going to deny the mistrial request.  
10:32:55 2 Let me say this. I'll give you your choice,  
10:32:58 3 Mr. Bennett. I can either instruct the jury to disregard  
10:33:01 4 that testimony, or I will allow you to read the other part  
10:33:06 5 of the order on your redirect. Mr. Saba can do that on  
10:33:13 6 redirect, if you want to do that, but it's an either/or,  
10:33:18 7 one or the other.

10:33:19 8 MR. BENNETT: Understood. We will take a curative  
10:33:21 9 instruction because the order will have not near enough  
10:33:23 10 context. But we would ask that the curative instruction go  
10:33:28 11 far enough to inform the jury about the misconduct, that  
10:33:35 12 they've been ordered not to read from or ask witnesses to  
10:33:39 13 read from and they did, and so I'm telling you to disregard  
10:33:39 14 that.

10:33:42 15 If I could make a representation, and we've got a  
10:33:45 16 real time transcript, and I will look through and see if I  
10:33:49 17 can find it. It wasn't that my witness volunteered it.  
10:33:52 18 Mr. Joshi followed up with a question, and said, and how  
10:33:55 19 does it finish or what did the rest of it say? It is  
10:33:57 20 something along those lines because Dr. Ducharme had no  
10:34:03 21 interest in reading that phrase on his own.

10:34:06 22 THE COURT: All right. So --

10:34:06 23 MR. JOSHI: Your Honor, I just asked him if he  
10:34:08 24 understood what the Court construction was. He read it. I  
10:34:10 25 did not ask him to read it.

10:34:12 1                   THE COURT: Well, the transcript will be what it  
10:34:14 2 will be. I mean, I am -- again, I'm going to leave it up  
10:34:18 3 to the Plaintiffs which alternative you choose. I can  
10:34:26 4 assure you, the instruction will not be worded like you've  
10:34:28 5 asked me to word it. So you may want to consider that. It  
10:34:32 6 will be much more measured in tone, but it will have the  
10:34:39 7 effect, I think, of what you're seeking, which is for the  
10:34:43 8 jury to understand that that testimony was improper.

10:34:47 9                   So as I said, I'm going to let you decide what you  
10:34:50 10 want to do. It will take us awhile to -- to sort of come  
10:34:54 11 up with something that is appropriate after having reviewed  
10:35:01 12 the transcript, but I certainly will do that.

10:35:06 13                   Like I said, I'm not going to let you do it both  
10:35:09 14 ways. So you'll either get the instruction or Mr. Saba can  
10:35:12 15 read the rest of the -- read the rest the order, that  
10:35:17 16 section, the part that you said was not read, and -- but  
10:35:20 17 not both. It'll be your choice.

10:35:22 18                   MR. BENNETT: We elect the curative instruction,  
10:35:25 19 Your Honor.

10:35:25 20                   THE COURT: Okay. All right. Let's have the jury  
10:35:27 21 brought in.

10:35:28 22                   COURT SECURITY OFFICER: Yes, Your Honor.

10:35:29 23                   All rise for the jury.

10:35:36 24                   (Jury in.)

10:36:02 25                   THE COURT: Please be seated.

10:36:03 1 You may continue.

10:36:05 2 MR. JOSHI: Thank you, Your Honor.

10:36:06 3 BY MR. JOSHI:

10:36:07 4 Q. Welcome back, Mr. -- Dr. Ducharme.

10:36:10 5 A. Thank you.

10:36:10 6 MR. JOSHI: Andrew, may I have DX-1, the patent,

10:36:15 7 brought back up, the Claim 1 language?

10:36:18 8 BY MR. JOSHI:

10:36:19 9 Q. I just have just a couple more questions on this,

10:36:22 10 Dr. Ducharme, and then we'll move on to something else, but

10:36:27 11 I just want to give this claim some context.

10:36:32 12 MR. JOSHI: Could you scroll up a little bit so we

10:36:34 13 can also see 1(a), Andrew? Thank you.

10:36:48 14 BY MR. JOSHI:

10:36:48 15 Q. So what that -- 1(a) says is: Receiving and

10:36:51 16 characterizing the real time digital video input image

10:36:56 17 featuring input image pixels.

10:37:00 18 I would just like to jury to understand what is

10:37:03 19 happening here. So input image pixels, could they, for

10:37:10 20 example, be coming in from a baseball game or some event

10:37:14 21 where an event is being videotaped? Would that refer to

10:37:18 22 input pixels coming into a system or your method here?

10:37:23 23 A. That would be an example of real time digital video.

10:37:28 24 Q. Yeah.

10:37:29 25 A. I agree.

10:37:29 1 Q. Okay. So what your method does here in Claim 1 is that  
10:37:32 2 these pixels have come in, work is going to be done on  
10:37:38 3 them, processing -- the words you used, arithmetic, I  
10:37:42 4 believe you said, logic, things will be done to them, and  
10:37:46 5 then the ultimate goal being then to display them on a  
10:37:49 6 screen, correct?

10:37:49 7 A. Yes.

10:37:50 8 Q. And that -- that's what this claim does, it takes --  
10:37:52 9 takes in input pixels, does something to them, that's the  
10:37:55 10 meat of the claim, in between, and at the end, then it  
10:37:58 11 displays it to a person watching the monitor, correct?

10:38:01 12 A. Yes.

10:38:01 13 Q. Okay. So in 1(a), input image pixels have come in, and  
10:38:14 14 would you agree that all of these pixels that come in have  
10:38:16 15 a red component, a blue component, and a green component,  
10:38:20 16 correct?

10:38:20 17 A. Are you asking about the format of the video stream?

10:38:25 18 Q. Yes, yes.

10:38:28 19 A. Yes.

10:38:29 20 Q. Okay. So we have these pixels that have come in, and  
10:38:37 21 when the pixels came in, the colors in them had some hue or  
10:38:45 22 some saturation value when they came in, correct?

10:38:48 23 MR. SABA: Your Honor, I'm going to object to this  
10:38:51 24 as a -- I guess on foundation. It's an improper  
10:38:56 25 hypothetical. We have no idea -- we're just supposed to

10:38:59 1 assume the scenario, and that -- and I think that's unfair  
10:39:02 2 and prejudicial to the witness.

10:39:03 3 MR. JOSHI: Your Honor, I'm allowed to ask  
10:39:05 4 hypothetical questions to an expert witness.

10:39:07 5 MR. SABA: I -- can I respond to that, Your Honor?

10:39:09 6 THE COURT: You may.

10:39:09 7 MR. SABA: I understand that, but it's just -- the  
10:39:12 8 foundation of the hypothetical doesn't even make sense.

10:39:15 9 THE COURT: Well, I'm going to let you go through  
10:39:17 10 it, Mr. Saba, in redirect, and you can explain to the jury  
10:39:21 11 through your questioning of the witness why you believe it  
10:39:23 12 does. And I'll give Mr. Joshi some leeway here.

10:39:27 13 MR. SABA: Thank you, Your Honor.

10:39:28 14 THE COURT: This is cross-examination.

10:39:35 15 MR. JOSHI: Thank you, Your Honor.

10:39:36 16 BY MR. JOSHI:

10:39:36 17 Q. And so in the user interface that we saw before, the  
10:39:39 18 user then makes an adjustment to a hue or saturation level?

10:39:46 19 We saw that, remember, in the --

10:39:48 20 A. Yes, it allows for the hue or saturation --

10:39:53 21 Q. Okay.

10:39:55 22 A. -- adjustment of an individual color.

10:39:56 23 Q. Correct. And that adjustment is meant for these input  
10:40:00 24 pixels that have come in that now need to be processed,  
10:40:03 25 correct?

10:40:03 1 A. Yes.

10:40:04 2 Q. Okay. And so when the -- when the user makes that

10:40:10 3 selection, that selection is going to apply to multiple of

10:40:16 4 these input image pixels, correct?

10:40:23 5 A. Can you tell me what -- what you mean by -- what you

10:40:25 6 mean by apply?

10:40:26 7 Q. It would -- later on when the processing is done of

10:40:37 8 these input image pixels, the adjustment that the user made

10:40:41 9 would affect multiple input pixels.

10:40:47 10 A. I'm going to assume that that's correct if it's a

10:40:52 11 picture of something colorful, sure.

10:40:55 12 Q. Correct. And taking that one step forward, then

10:40:58 13 multiple individual colors were selected, correct?

10:41:07 14 A. It may -- I don't believe that on that ASUS interface,

10:41:15 15 you can select more than one individual color to adjust. I

10:41:18 16 mean, when you go into that menu and you go into

10:41:21 17 advanced --

10:41:22 18 Q. Yes.

10:41:23 19 A. -- and then you can choose either a hue adjustment --

10:41:23 20 Q. Yes.

10:41:25 21 A. -- or a saturation adjustment.

10:41:26 22 Q. Yes.

10:41:27 23 A. Let's say you go into the saturation adjustment --

10:41:29 24 Q. Yes.

10:41:29 25 A. -- it then gives you the individual colors as the -- as

10:41:33 1 described in Step B for, say, red, green, blue, cyan,  
10:41:39 2 yellow, magenta, and those are the individual colors that  
10:41:42 3 you're allowed to select. And it gives you a slider, and  
10:41:45 4 that slider is then -- this Part B that we've selected an  
10:41:49 5 adjustment to be made and where now the slider is giving  
10:41:54 6 you a delta value, that's the --

10:41:54 7 Q. Sure.

10:41:55 8 A. -- amount of the change that you want.

10:41:56 9 Q. You said something very interesting.

10:41:58 10 By the way, are you finished, or did I interrupt  
10:42:01 11 you? Are you finished?

10:42:09 12 A. I'm finished.

10:42:09 13 Q. Okay. So you said something very interest. You said  
10:42:11 14 those red, green, blue that showed up on that menu, those  
10:42:14 15 are the individual colors. Did I hear you correctly?

10:42:17 16 A. Those are the individual color selections that you can  
10:42:19 17 make on that menu, yes.

10:42:20 18 Q. Okay. So you see those as individual colors and not as  
10:42:25 19 color components?

10:42:35 20 A. Well, red, green, and blue could be either, and then  
10:42:41 21 cyan, yellow, magenta are individual colors.

10:42:44 22 Q. So red is a color component, correct?

10:42:47 23 A. Yes.

10:42:47 24 Q. Okay. And so when the user selected the hue value, she  
10:42:51 25 selected hue value, if there is a pixel where red is at

10:42:57 1 100 percent, she selected red for a pixel in which red is  
10:43:04 2 only 90 percent, and she selected red for a pixel in which  
10:43:08 3 red is only 80 percent, correct?

10:43:10 4 A. I think it -- I think how you're describing it, as you  
10:43:14 5 were before, is misrepresenting what happens when you move  
10:43:19 6 that slider.

10:43:20 7 Q. Okay.

10:43:21 8 A. When you move the slider, remember, you're just  
10:43:24 9 selecting, choosing an amount that you want to change that  
10:43:30 10 feature. So it's just a digital number for -- for the  
10:43:33 11 amount of change.

10:43:35 12 Q. But that change applies to multiple individual colors  
10:43:39 13 that have red as a component, correct?

10:43:41 14 A. Not in this step.

10:43:44 15 Q. Not in -- okay. But it will eventually, correct?

10:43:54 16 A. Yes, according to this method --

10:43:56 17 Q. Okay.

10:43:58 18 A. -- pixels -- pixels will be selected.

10:44:00 19 Q. Okay. All right.

10:44:02 20 MR. JOSHI: Your Honor, I would move to seal the  
10:44:04 21 courtroom.

10:44:05 22 THE COURT: Okay. The courtroom will need to be  
10:44:07 23 sealed at this time. Anyone not subject to the protective  
10:44:12 24 order will need to excuse themselves. And we'll unseal it  
10:44:16 25 as quickly as we can.

10:44:19 1 (Courtroom sealed.)

10:44:47 2

10:44:47 3 (This portion of the transcript is sealed and

10:44:47 4 filed under a separate cover as Sealed Portion No. 1.)

11:22:54 5

11:22:55 6 (Courtroom unsealed.)

11:23:20 7 MR. JOSHI: Could we please go back to DX-1 at

11:23:28 8 Column 10. Column 10. Okay. Please scroll down. And if

11:23:52 9 you don't mind, Andrew, please zoom in on where it says:

11:23:57 10 "In Case 1," and a little bit above that. Okay.

11:24:03 11 BY MR. JOSHI:

11:24:05 12 Q. Dr. Ducharme, you read this patent?

11:24:08 13 A. Yes.

11:24:08 14 Q. Okay. And do you understand what I am showing now --

11:24:14 15 showing you now is a preferred embodiment of the patent?

11:24:18 16 A. Yes.

11:24:18 17 Q. Could you tell the members of the jury what a preferred

11:24:21 18 embodiment of a patent is?

11:24:24 19 A. It's -- in some ways, it's an example of how the patent

11:24:28 20 could be used.

11:24:34 21 Q. Okay. And the claims cover preferred embodiments, do

11:24:42 22 they?

11:24:44 23 You want me to rephrase that question?

11:24:50 24 A. Yeah. I don't know how to answer that.

11:24:53 25 Q. Can a claim be read in a manner that excludes the

11:24:57 1 preferred embodiment?

11:24:59 2 MR. SABA: Your Honor, I'm going to -- I'd like to  
11:25:01 3 object to this line of questioning. We're back into the  
11:25:04 4 claim construction order again, and this is an  
11:25:06 5 inappropriate line of questioning.

11:25:07 6 MR. JOSHI: I would -- I would ask this question  
11:25:09 7 of any expert, Your Honor, this is a normal expert  
11:25:12 8 question.

11:25:12 9 THE COURT: Okay. We're not going to talk about  
11:25:15 10 the claim construction order, correct?

11:25:16 11 MR. JOSHI: Correct.

11:25:17 12 MR. SABA: Thank you, Your Honor.

11:25:19 13 BY MR. JOSHI:

11:25:20 14 Q. And you see at the bottom of what's shown up there, do  
11:25:23 15 you see an equation?

11:25:25 16 A. Yes.

11:25:25 17 Q. Okay. The R there refers the color red?

11:25:31 18 A. Yes.

11:25:34 19 Q. Okay. So now what this inequality shows is that --  
11:25:41 20 well, let me read it, okay?

11:25:43 21 In Case 1, where the independent red hue control  
11:25:48 22 delta value,  $H_r$ , or the independent red saturation delta  
11:25:55 23 value,  $S_r$ , of Step B is not equal to zero, there is  
11:26:02 24 identifying each input image pixel having red,  $R$ , as the  
11:26:08 25 individual color whose hue or saturation was selected to be

11:26:11 1 independently changed, according to the following logical  
11:26:16 2 conditions.

11:26:20 3 And what this says is that in this logical  
11:26:26 4 condition, the red is greater than green plus a constant  
11:26:30 5 and red is greater than blue plus a constant, and the  
11:26:37 6 constants are positive constants. Do you see that?

11:26:39 7 A. Yes.

11:26:40 8 Q. Okay. So what this preferred embodiment says is: For  
11:27:02 9 identifying an input image pixel as having red, you want  
11:27:07 10 to identify pixels, and you want to identify a certain  
11:27:10 11 pixel's -- we have pixels, and you want to identify a  
11:27:14 12 certain pixel as having red.

11:27:15 13 To do that, we have to see if red is greater than  
11:27:19 14 green plus a constant and if red is greater than blue plus  
11:27:23 15 a constant, correct?

11:27:25 16 MR. SABA: Your Honor, I'd like to object on --  
11:27:29 17 that this line of questioning is misleading, and it -- and,  
11:27:35 18 again, I'd like to renew that we're getting into -- sounds  
11:27:39 19 like claim construction arguments.

11:27:41 20 THE COURT: Overruled. You can go into this on  
11:27:45 21 redirect.

11:27:45 22 MR. SABA: Thank you, Your Honor.

11:27:47 23 BY MR. JOSHI:

11:27:49 24 Q. Do you understand this, sir? Do you understand this  
11:27:51 25 inequality?

11:27:52 1 A. I understand this inequality.

11:27:54 2 Q. Please tell us what it means.

11:27:57 3 A. So Case 1 is an example of how pixels could be

11:28:01 4 identified.

11:28:01 5 Q. Okay.

11:28:02 6 A. And so using this preferred embodiment, this example

11:28:07 7 that's given in the -- in the specification of the patent,

11:28:12 8 red would be -- for a pixel to be selected as a -- for a

11:28:18 9 pixel to be selected, the -- and that's the red input

11:28:23 10 pixel, it would need to be greater than green by some

11:28:27 11 argument, and red would also have to be greater than blue

11:28:31 12 by some argument. I mean, I'm just repeating what you

11:28:36 13 said.

11:28:36 14 Q. Okay.

11:28:36 15 A. That's about as much as I can explain of the

11:28:36 16 inequality.

11:28:37 17 Q. I think they feel better hearing from you because you

11:28:37 18 have a Ph.D., I don't. So that's why --

11:28:37 19 A. Okay.

11:28:43 20 Q. Thanks for explaining that. Okay. So...

11:28:45 21 MR. JOSHI: May I please have the Elmo again?

11:29:12 22 BY MR. JOSHI:

11:29:34 23 Q. You did a demonstration yesterday, sir, remember?

11:29:39 24 A. Yes.

11:29:40 25 Q. And this slide is from that demonstration?

11:29:47 1 A. Yes.

11:29:48 2 Q. Okay. And as I recall, in that demonstration you said

11:29:50 3 that -- that color on the very left is red, correct?

11:29:52 4 A. Yes.

11:29:53 5 Q. And you also said that the two colors on the very right

11:29:56 6 are also red?

11:29:57 7 A. Yes.

11:29:58 8 Q. Okay. Now, if you look at the color shown very much to

11:30:06 9 the right, the yellow one, their red and green are equal,

11:30:09 10 correct?

11:30:10 11 A. I'm sorry. I -- which -- which two -- which two are

11:30:19 12 green is equal and which two?

11:30:22 13 Q. All the way to the right, the yellow. R is 100, and

11:30:26 14 green is 100.

11:30:27 15 A. Yes, I agree.

11:30:28 16 Q. Okay. So there, red is not greater than green,

11:30:31 17 correct?

11:30:32 18 A. That's correct.

11:30:33 19 Q. So under the inequality we just looked at, that color

11:30:38 20 would not be red?

11:30:41 21 A. Using the inequality that we just went over?

11:30:46 22 Q. Yes.

11:30:47 23 A. You're correct.

11:30:47 24 Q. Okay. And the next -- the color next to it, R is 100

11:30:59 25 and blue is 100, correct?

11:31:01 1 A. Yes.

11:31:02 2 Q. So under the inequality we looked at, here also, this

11:31:12 3 color would not be red under that inequality, correct?

11:31:16 4 A. That's correct.

11:31:17 5 Q. Okay. So -- so you would agree that this slide is

11:31:24 6 inconsistent with the inequality we just looked at in the

11:31:27 7 patent?

11:31:27 8 A. Yes, that's correct.

11:31:29 9 Q. Okay.

11:32:10 10 MR. JOSHI: Andrew, would you please bring up

11:32:12 11 their slide? I believe it's 54 from yesterday.

11:32:26 12 MR. OLIVER: We never received --

11:32:27 13 MR. JOSHI: Okay. Let me -- let me just put it

11:32:31 14 on -- I'll just put it on the Elmo.

11:32:45 15 I'm sorry to keep doing this to you, ma'am, back

11:32:50 16 and forth. Okay.

11:32:51 17 BY MR. JOSHI:

11:33:00 18 Q. Dr. Ducharme, you recall testifying about this slide

11:33:03 19 yesterday?

11:33:03 20 A. Yes.

11:33:03 21 Q. Okay. And you had a conversation with Mr. Saba, I

11:33:08 22 think -- it might even have been this morning, but

11:33:11 23 yesterday, also?

11:33:12 24 A. Yes.

11:33:13 25 Q. Double patenting. Okay. So what ASUS is alleging

11:33:18 1 here, I just want to make sure you understand, is that the  
11:33:23 2 inventor of the patent, '435 patent, Mr. Segman, filed two  
11:33:28 3 patents two years apart to extend the patent term which is  
11:33:32 4 not allowed. You would disagree, obviously, but you  
11:33:36 5 understand our position?

11:33:38 6 MR. SABA: Your Honor, sidebar.

11:33:39 7 THE COURT: Mr. Joshi, I think that we're getting  
11:33:52 8 pretty close here.

11:33:53 9 MR. JOSHI: Okay.

11:33:54 10 BY MR. JOSHI:

11:33:55 11 Q. Okay. So can you tell us what the double patenting  
11:33:57 12 issue is in this case?

11:33:58 13 A. You just described it. Your -- ASUS is -- sorry --  
11:34:05 14 ASUS is suggesting that the patentee somehow got two  
11:34:15 15 patents for the same invention --

11:34:17 16 Q. Right.

11:34:18 17 A. -- through the United States Patent Office.

11:34:20 18 Q. Okay. And that the inventor's first patent is the '435  
11:34:29 19 patent -- or one of them is the '435 patent that's in this  
11:34:32 20 case, correct?

11:34:32 21 A. Yes.

11:34:33 22 Q. And his other patent is the '012 patent that was filed  
11:34:40 23 earlier; is that correct?

11:34:40 24 A. That's my understanding.

11:34:41 25 Q. Okay. And what you say on this slide is that they are

11:34:45 1 different, correct?

11:34:46 2 A. Yes.

11:34:46 3 Q. Okay. And you say that the difference between the two

11:35:00 4 is what's called look-up tables?

11:35:03 5 A. Yes. Well, that's part of the reason they're

11:35:06 6 different, but, yes.

11:35:07 7 Q. Well, that's the only one on this slide, correct?

11:35:10 8 A. The only one -- what are you referring to?

11:35:13 9 Q. The only differentiator between '012 and '435 is the

11:35:21 10 look-up table on this slide?

11:35:22 11 A. That's what's described on the slide, I agree.

11:35:28 12 Q. Okay. And the other -- or not the other side, but what

11:35:44 13 would be different from a look-up table would be arithmetic

11:35:49 14 and logical operations, correct?

11:35:51 15 A. Yes.

11:35:51 16 Q. So you contend that '435 discloses arithmetic and

11:35:59 17 logical operations, and '012 teaches look-up tables, and

11:36:05 18 that's a difference between them, correct? That's why

11:36:08 19 they're different, in part?

11:36:09 20 A. In part, that's why they're different.

11:36:11 21 Q. Okay. But it is your contention that arithmetic logic

11:36:19 22 operations are -- and I don't want to say "very," but

11:36:24 23 meaningfully different from look-up tables; is that

11:36:30 24 correct? Significantly different?

11:36:32 25 A. Yes.

11:36:32 1 Q. Okay.

11:36:33 2 A. The way that the -- the way that they're implemented in

11:36:39 3 the source code is.

11:36:41 4 Q. Okay. Do you recall having taken exactly an opposite

11:36:49 5 position in this litigation on that issue?

11:36:53 6 A. Do I remember -- I'm sorry?

11:36:55 7 Q. Do you remember taking a position in an expert report

11:36:58 8 that the difference between a look-up table on the one hand

11:37:03 9 and arithmetic logical operations on the other hand is

11:37:12 10 insignificant?

11:37:12 11 A. I don't recall that.

11:37:13 12 MR. JOSHI: Your Honor, may I have permission to

11:37:15 13 show the expert his expert report?

11:37:18 14 THE COURT: Yes, you may.

11:37:20 15 MR. JOSHI: Can you pull up Dr. Ducharme's --

11:37:23 16 THE COURT: Not on the screen. You will have to

11:37:28 17 give him a copy.

11:37:35 18 MR. BENNETT: Your Honor, for saving time, I

11:37:36 19 believe there's a copy of his report on --

11:37:39 20 THE COURT: That's fine. If you can direct him to

11:37:43 21 it, maybe --

11:38:03 22 THE WITNESS: I have a copy of my report.

11:39:06 23 THE COURT: Mr. Joshi, just to be clear, what --

11:39:09 24 until you've refreshed his recollection, you can't put it

11:39:13 25 on the screen. But once you've done that, it can be

11:39:16 1 published.

11:39:17 2 MR. JOSHI: Okay. I apologize for the confusion  
11:39:20 3 here. Just take -- just take one minute to find the  
11:39:24 4 location in his report.

11:40:10 5 BY MR. JOSHI:

11:40:10 6 Q. Sorry about that, Dr. Ducharme.

11:40:11 7 So you would look at Paragraph 70 of your  
11:40:17 8 supplemental infringement report.

11:40:19 9 A. I'm sorry. What was the --

11:40:22 10 Q. Your supplemental infringement, Paragraph 70, 7-0.

11:40:30 11 A. Okay.

11:40:31 12 Q. Okay. Do you believe -- do you see what you say there?

11:41:28 13 Do you see that last sentence --

11:41:30 14 A. I'm almost there.

11:41:34 15 Q. Okay. Take your time.

11:41:43 16 A. Yes, I see the word "insubstantially."

11:41:46 17 Q. Right.

11:41:47 18 MR. JOSHI: Your Honor, may I read it to the jury?

11:41:50 19 THE COURT: Any objection?

11:41:52 20 MR. SABA: Yes, Your Honor. I don't believe he  
11:41:54 21 has properly laid a predicate for a -- if he's going to for  
11:41:58 22 a prior inconsistent statement, I don't think the  
11:42:01 23 foundation has been established.

11:42:02 24 THE COURT: I think that's right, Mr. Joshi. I  
11:42:05 25 think you can do it, but you haven't done it yet.

11:42:07 1 MR. JOSHI: Okay.

11:42:13 2 BY MR. JOSHI:

11:42:17 3 Q. Dr. Ducharme, would you agree that the position you  
11:42:19 4 have taken in Paragraph 70 of your supplemental expert  
11:42:23 5 report on infringement is inconsistent with the position  
11:42:28 6 you took in this Court yesterday on double patenting with  
11:42:33 7 regards to look-up tables?

11:42:40 8 A. Do I -- what was the question part of that?

11:42:42 9 Q. Do you agree that the two positions are inconsistent?

11:42:45 10 A. Before I answer that, just to make sure, can you repeat  
11:42:52 11 the whole question?

11:42:54 12 Q. Sure. So we just had a discussion about a position you  
11:43:02 13 took about -- took on double patenting in this courtroom  
11:43:07 14 yesterday. And then in conversation with me today, I  
11:43:10 15 believe you said that a significant difference between the  
11:43:16 16 '435 patent and the '012 patent is that the '012 patent  
11:43:24 17 teaches color manipulation using look-up tables, LUTs. And  
11:43:30 18 I'm asking if that position is inconsistent with what you  
11:43:32 19 said at the bottom of Paragraph 70 of your supplemental  
11:43:38 20 expert report on infringement?

11:43:40 21 A. Well, what I said today to you was that that was part  
11:43:45 22 of the difference, but it wasn't the whole difference.

11:43:49 23 When you asked me if it was a significant difference, I  
11:43:52 24 said it was -- it's a difference -- part -- it's only part  
11:43:57 25 of the difference. It's not the whole -- whole difference.

11:44:01 1 MR. JOSHI: Your Honor, I believe I have now laid  
11:44:04 2 the foundation to publish.

11:44:06 3 MR. SABA: Your Honor, I do not believe he's laid  
11:44:08 4 the foundation for a prior inconsistent statement. That's  
11:44:11 5 what he is trying to establish.

11:44:12 6 THE COURT: I agree. Can you just show him the  
11:44:22 7 testimony?

11:44:23 8 MR. JOSHI: I showed it to him.

11:44:27 9 THE COURT: Okay. And just lay the foundation --

11:44:27 10 MR. JOSHI: Okay.

11:44:29 11 THE COURT: -- for the conditions of the  
11:44:31 12 deposition, when it was taken --

11:44:31 13 MR. JOSHI: Okay.

11:44:33 14 THE COURT: -- whether he swore to tell the  
11:44:36 15 truth --

11:44:36 16 MR. JOSHI: Yes.

11:44:36 17 THE COURT: -- all of that.

11:44:38 18 BY MR. JOSHI:

11:44:38 19 Q. So, Dr. Ducharme, you submitted a supplemental expert  
11:44:42 20 report on infringement in this case; is that correct?

11:44:45 21 A. Yes.

11:44:45 22 Q. And that's dated October 29, 2020, correct?

11:44:55 23 A. You're referring to the report that I have in my hand?

11:44:58 24 Q. Yes, sir.

11:45:00 25 A. I don't see a date. I don't remember the date.

11:45:02 1 Q. The date is on the very last page.

11:45:05 2 A. Oh, of course. Yes, October 29th, 2020.

11:45:11 3 Q. Okay. And do you see right above your signature it

11:45:16 4 says: I swear under penalty of perjury that the forgoing

11:45:20 5 is true and correct?

11:45:21 6 A. Yes.

11:45:22 7 Q. Did you mean it when you signed this document?

11:45:25 8 A. Of course, yes.

11:45:32 9 Q. And then is there a Paragraph 70 in this document?

11:45:35 10 A. Yes.

11:45:36 11 Q. And is there a discussion of LUT at the bottom of this

11:45:40 12 paragraph?

11:45:40 13 A. Yes.

11:45:40 14 Q. Okay. And you wrote this?

11:45:42 15 A. Yes.

11:45:42 16 Q. Okay.

11:45:43 17 MR. JOSHI: Your Honor, may I publish?

11:45:45 18 THE COURT: Mr. Saba?

11:45:48 19 MR. SABA: Your Honor, he has not established that

11:45:51 20 there's some sort of prior inconsistent statement. He just

11:45:54 21 wants to publish an exhibit that the witness --

11:45:57 22 THE COURT: I tell you what I'm going to do is I'm

11:45:59 23 going to let you read it.

11:46:01 24 MR. JOSHI: Okay. Thank you.

11:46:03 25 BY MR. JOSHI:

11:46:03 1 Q. So here's what you said:

11:46:07 2 The accused device is capable of achieving  
11:46:13 3 substantially similar results using insubstantially  
11:46:16 4 different operations. For example, the accused devices are  
11:46:19 5 capable and do achieve identifying the pixel values with  
11:46:23 6 the individual color to be changed in applying the change  
11:46:27 7 to either hue or saturation. Those values do not change  
11:46:31 8 accordingly as confirmed and explained by my testing of  
11:46:35 9 accused products. Therefore, even if the accused devices,  
11:46:39 10 for example, uses a matrix or LUT transform, it still  
11:46:46 11 achieves substantially similar results with insubstantially  
11:46:50 12 different operations.

11:46:51 13 MR. JOSHI: Thank you, Your Honor.

11:46:54 14 MR. SABA: Your Honor, I don't know if there's a  
11:46:56 15 question.

11:46:57 16 THE COURT: Is there a question? Are you  
11:46:59 17 following up, Mr. Joshi?

11:47:00 18 MR. JOSHI: Yes.

11:47:01 19 BY MR. JOSHI:

11:47:01 20 Q. Did I read that correctly, Dr. Ducharme?

11:47:04 21 A. Yes.

11:47:06 22 Q. Okay. Thank you.

11:47:38 23 MR. JOSHI: So, Your Honor, the next thing we  
11:47:41 24 wanted to do was do some -- not testing but wanted to show  
11:47:45 25 something to Dr. Ducharme so we can we start -- if you

11:47:49 1 like, we could set up now and start or we could wait until  
11:47:52 2 after lunch. It's up to you.

11:47:54 3 THE COURT: How long would it take to set it up?

11:47:57 4 MR. JOSHI: It only takes a couple of minutes to  
11:48:00 5 set it up.

11:48:04 6 THE COURT: Go ahead and do it now.

11:48:07 7 MR. JOSHI: Okay. Thank you, Your Honor.

11:48:10 8 THE WITNESS: Can I be excused for a moment to use  
11:48:12 9 the restroom?

11:48:13 10 THE COURT: Yes.

11:48:15 11 Ladies and gentlemen of the jury, we're just going  
11:48:17 12 to wait for a few moments to get the equipment set up. You  
11:48:19 13 guys are welcome to stretch, if you want to, stand up for  
11:48:24 14 just a moment, and we'll get back started in just a second.

11:48:27 15 MR. BENNETT: Your Honor, there may be a few  
11:48:30 16 lawyers who need to walk down the hall, as well, if that's  
11:48:35 17 all right.

11:48:35 18 THE COURT: Well, as soon as the equipment is set  
11:48:37 19 up, if it really just takes a couple of minutes as  
11:48:41 20 Mr. Joshi has said, we're going to start back, so they  
11:48:46 21 might not want to go very far.

11:52:41 22 (Recess.)

11:52:59 23 MR. JOSHI: Your Honor, we're ready to begin.

11:53:02 24 THE COURT: Very well. Please proceed.

11:53:05 25 BY MR. JOSHI:

11:53:05 1 Q. Dr. Ducharme, this is Plaintiff's Exhibit 11, one of  
11:53:10 2 the monitors that was used by you yesterday to do some --  
11:53:14 3 A. Okay.  
11:53:15 4 Q. -- demonstrations, so I'm going to ask you a few  
11:53:23 5 questions.

11:53:45 6 So, Dr. Ducharme, before the break, we looked at  
11:53:47 7 an inequality in the patent. Do you recall?

11:53:50 8 A. Yes.

11:53:51 9 Q. Under that inequality, this color that's shown on the  
11:53:55 10 display would not be red, correct?

11:53:57 11 A. Under the inequality in the preferred embodiment of the  
11:54:01 12 patent?

11:54:02 13 Q. Yes.

11:54:02 14 A. Yes, that would be correct.

11:54:04 15 Q. And that's because red is lower than blue, correct,  
11:54:06 16 here?

11:54:06 17 A. Yes.

11:54:07 18 Q. Okay. Now, we're going to -- so when we -- when we  
11:54:17 19 adjust red value on this monitor, that should not affect  
11:54:21 20 this color, correct?

11:54:24 21 A. So what specifically is the question? When you move  
11:54:30 22 the red slider?

11:54:31 23 Q. When we -- yeah, when we move the red slider on this  
11:54:37 24 monitor to practice Claim 1, this color should not change  
11:54:41 25 because this color is not red, correct?

11:54:43 1 A. This is a 3-axis monitor, and as I showed yesterday,  
11:54:50 2 because it has a red component in the color that you're  
11:54:54 3 displaying on the screen, when you move the red slider,  
11:54:57 4 that color will change.

11:54:59 5 Q. Let's just -- let's do it. Can we adjust the red,  
11:55:07 6 please? What's the red value right now? Okay. So red's  
11:55:18 7 at 50?

11:55:19 8 MR. JOSHI: Increase the red to 100, please.

11:55:23 9 BY MR. JOSHI:

11:55:26 10 Q. Dr. Ducharme, do you agree that the color changed?

11:55:28 11 A. Yes.

11:55:30 12 MR. JOSHI: Now take it back down to 50,  
11:55:33 13 Mr. Oliver, and now take it down to 0.

11:55:41 14 BY MR. JOSHI:

11:55:42 15 Q. Now that color is blue, Dr. Ducharme, so the color  
11:55:45 16 changed again?

11:55:46 17 A. Yes.

11:55:46 18 Q. So a question for you -- my question for you is this.

11:55:51 19 MR. JOSHI: Go back to the way it was before.

11:55:53 20 Okay.

11:55:54 21 BY MR. JOSHI:

11:55:54 22 Q. So what we have here is under the inequality, this  
11:56:07 23 color is not red, correct?

11:56:10 24 A. That's correct.

11:56:12 25 Q. Okay. And are you familiar with "without affecting any

11:56:19 1 other individual color" limitation of Claim 1?

11:56:22 2 A. Yes.

11:56:23 3 Q. So if -- if red is the color that we are adjusting,

11:56:35 4 then -- then any other individual color would include this

11:56:39 5 color, correct?

11:56:41 6 A. No.

11:56:41 7 Q. Why not?

11:56:43 8 A. The Court's interpretation of any other color is the

11:56:54 9 remaining pixels. So it receives the digital video, you

11:57:01 10 make a selection for the color that you want to change on

11:57:03 11 the screen, you move the red slider as you've done. It

11:57:07 12 then identifies all the pixels in the screen that have that

11:57:12 13 individual color, that component color red, and it puts all

11:57:17 14 of those pixels in a "I'm going to change you" bucket, and

11:57:21 15 then all of the other pixels go in the "I'm not going to

11:57:24 16 change you" bucket.

11:57:26 17 And so when you mentioned the other colors won't

11:57:30 18 change, the other colors are the remaining -- the remaining

11:57:35 19 pixels, the pixels that weren't selected in -- in the

11:57:40 20 monitor's brain, I guess you will.

11:57:41 21 Q. So, sir, is it your position that any pixel that had

11:57:47 22 any red at all would be selected?

11:57:51 23 A. That's what the ASUS products demonstrate, yes.

11:57:57 24 Q. Okay. But for infringement of Claim 1?

11:58:02 25 A. Yes.

11:58:02 1 Q. Okay. For infringement of Claim 1, this color that you  
11:58:13 2 see on the screen, would it be considered a red color or  
11:58:18 3 not a red color?

11:58:21 4 A. It's considered a color that includes the selected  
11:58:26 5 color red. That's how the monitor thinks about it.

11:58:30 6 Q. Okay. As somebody who is offering an infringement  
11:58:34 7 opinion on Claim 1, okay, and specifically with respect to  
11:58:45 8 the limitation without affecting any other individual  
11:58:48 9 color --

11:58:50 10 A. Mm-hmm.

11:58:50 11 Q. -- okay, is this color that's demonstrated here having  
11:58:56 12 an R quantity of 240, G quantity of 0, and B quantity of  
11:59:02 13 255, is this red or is this not red?

11:59:08 14 MR. SABA: Your Honor, I'm going to object to  
11:59:10 15 asked and answered.

11:59:11 16 THE WITNESS: Yeah, I believe --

11:59:12 17 THE COURT: Sustained. Let's move along,  
11:59:15 18 Mr. Joshi.

11:59:16 19 MR. JOSHI: Okay.

11:59:18 20 BY MR. JOSHI:

11:59:18 21 Q. All right. So let's do another color.

11:59:20 22 MR. JOSHI: We have another one?

11:59:20 23 BY MR. JOSHI:

11:59:21 24 Q. So, Dr. Ducharme, I have a color up on the screen whose  
11:59:25 25 R component value is 240, the green component value is 255,

11:59:31 1 and the blue component value is 0. Would you agree that  
11:59:35 2 this color is not red for the purposes of infringement of  
11:59:43 3 Claim 1?

11:59:46 4 A. The first part was would I agree?

11:59:48 5 Q. Would you agree?

11:59:49 6 A. No, I would not agree.

11:59:51 7 Q. Okay.

11:59:52 8 A. I would -- this color includes the -- assuming we are  
11:59:55 9 going to move the red slider, the selected color, the  
11:59:59 10 change. So it has some red in it, so it's going to change.

12:00:03 11 Q. Okay. So for the -- now, the word "slider" is not in  
12:00:12 12 Claim 1, is it?

12:00:12 13 A. No. That's kind of my term for -- a delta term, a  
12:00:16 14 delta value.

12:00:16 15 Q. All right. Well, let's use the terms that are in the  
12:00:19 16 patent. So in the patent Claim 1 --

12:00:23 17 A. Em-hmm.

12:00:24 18 Q. -- okay, an adjustment is made to a color -- let's say  
12:00:31 19 a red or a green or a blue -- and what the claim requires  
12:00:38 20 is that the adjustment of that color should not cause any  
12:00:42 21 other color to change, correct?

12:00:56 22 A. That is what -- yeah, the -- any other color is --

12:01:02 23 that's -- that is the -- the words that are used in the  
12:01:06 24 claim. Yes, that's correct.

12:01:07 25 Q. Okay. And then --

12:01:09 1 A. But when I evaluate this, I have to use the Court's  
12:01:16 2 construction. That's how the parties and the Judge agree  
12:01:19 3 that the words in the claims should be understood. As long  
12:01:26 4 as -- unless they're of plain and ordinary meaning, so "any  
12:01:31 5 other color" had a special definition in that core  
12:01:35 6 construction.

12:01:35 7 Q. Okay. So do you agree that for an ASUS product to  
12:01:43 8 infringe Claim 1 -- by way of example, if an adjustment is  
12:01:49 9 made to a -- if an adjustment is made to red, then a color  
12:02:00 10 that is not red should not change?

12:02:04 11 A. You're -- the premise of your question isn't -- I  
12:02:08 12 disagree with it. It -- you're saying an adjustment is  
12:02:12 13 made to a color. As the patent says, you will select a  
12:02:18 14 color to adjust.

12:02:19 15 Q. Right.

12:02:21 16 A. It's -- they're -- they're different processes, so...

12:02:23 17 Q. Very good point. Very good point. So let's say if we  
12:02:27 18 select a color red to change --

12:02:31 19 A. Okay.

12:02:31 20 Q. -- okay, if we select a color red to change and then  
12:02:36 21 proceed to change that color, then a color that is not red  
12:02:39 22 should not change, correct?

12:02:41 23 MR. SABA: Your Honor, I'm going to object again  
12:02:44 24 to asked and answered.

12:02:46 25 THE COURT: Sustained.

12:02:47 1 MR. JOSHI: All right. So, Mr. Oliver, please  
12:02:51 2 bring up the menu to make adjustments to red, blue, or  
12:02:57 3 green. What's the red at? Can you see? Is it 50? Can  
12:03:11 4 you make the red 50, please? Now could you take it to 100?  
12:03:18 5 BY MR. JOSHI:  
12:03:19 6 Q. Dr. Ducharme, do you see that the color changed?  
12:03:21 7 A. Yes, the color changed.  
12:03:23 8 MR. JOSHI: Can you take the red back down to 30?  
12:03:26 9 Could you please take it to 0 on the red? It's not  
12:03:37 10 working? No, take it down to 0, just the red.  
12:03:42 11 BY MR. JOSHI:  
12:03:42 12 Q. And you see that the color changed again?  
12:03:45 13 A. I see that the color changed.  
12:03:48 14 MR. JOSHI: And -- all right. Let's go to the  
12:03:50 15 next color. Yeah, next. Okay.  
12:03:58 16 BY MR. JOSHI:  
12:03:59 17 Q. So I have another color for you here, Dr. Ducharme.  
12:04:09 18 This has a component that is -- red is 0, green is 240, and  
12:04:16 19 blue is 255.  
12:04:18 20 A. Yes.  
12:04:19 21 Q. Would you agree that in the preferred embodiment of the  
12:04:24 22 patent, this color would not be green?  
12:04:32 23 MR. SABA: Your Honor, I'm going to object to  
12:04:35 24 relevance.  
12:04:35 25 THE COURT: I'll sustain that objection.

12:04:37 1 Move along, Mr. Joshi.

12:04:40 2 MR. JOSHI: All right. So -- well, Your Honor,  
12:04:43 3 the relevance is --

12:04:45 4 THE COURT: Well, to the extent you're comparing  
12:04:48 5 this preferred embodiment to the accused products, I'm  
12:04:54 6 concerned about that. Is that -- is that what you're  
12:04:57 7 doing?

12:04:59 8 MR. JOSHI: I also -- yeah, we would have to have  
12:05:03 9 a sidebar to discuss that, Your Honor.

12:05:05 10 THE COURT: All right. Let's go ahead and break  
12:05:07 11 for lunch at this time.

12:05:08 12 Ladies and gentlemen of the jury, your lunches  
12:05:10 13 should be here, and we will be in recess until a little  
12:05:16 14 after 1:00. Don't discuss the case among yourselves until  
12:05:21 15 all of the evidence has been presented and I have  
12:05:25 16 instructed you on the law.

12:05:27 17 COURT SECURITY OFFICER: All rise.

12:05:31 18 (Jury out.)

12:05:52 19 MR. BENNETT: Before we get into this, just a  
12:05:55 20 quick housekeeping matter. We have lunch for Dr. Ducharme,  
12:05:59 21 but obviously we're on cross, so I want to talk to him just  
12:06:04 22 for a second in open court so everyone can hear and see and  
12:06:08 23 then send him on his way so he can eat his lunch.

12:06:11 24 THE COURT: Sure.

12:06:14 25 (Discussion held off the record.)

12:06:23 1 THE COURT: You're excused.

12:06:25 2 THE WITNESS: Thank you.

12:06:25 3 THE COURT: Okay. You all sit down. Let's  
12:06:28 4 address this issue.

12:06:29 5 When the discussion of the preferred embodiment  
12:06:31 6 first came up, Mr. Joshi was just sort of explaining what a  
12:06:36 7 preferred embodiment was.

12:06:39 8 To that, Mr. Saba, you objected, which I  
12:06:43 9 overruled. And then we -- we're in an area here I'm a  
12:06:50 10 little concerned about, Mr. Joshi. So how is what you --  
12:06:54 11 you're asking the witness to do right now not amounting to  
12:06:59 12 comparing the preferred embodiment to the products in a way  
12:07:03 13 that is inappropriate?

12:07:05 14 MR. JOSHI: I am doing that, and it's not  
12:07:07 15 inappropriate for the following reason. The way the  
12:07:10 16 Court's claim construction order is written, when it --  
12:07:12 17 when it comes down to a certain limitation, the Court says,  
12:07:16 18 for the meaning of this, see preferred embodiment, and  
12:07:20 19 actually cites to the inequality I just mentioned.

12:07:23 20 So the preferred -- the definition is the  
12:07:26 21 preferred embodiment in the Court's claim construction  
12:07:29 22 order, and I can -- I can show you the details if you like.

12:07:32 23 THE COURT: Well, I'll be glad to look at it.

12:07:36 24 Let me hear from you, Mr. Saba.

12:07:39 25 MR. SABA: Your Honor --

12:07:40 1 THE COURT: I don't think we said the claim was  
12:07:43 2 limited to the preferred embodiment.

12:07:46 3 MR. SABA: I agree with that, Your Honor, and the  
12:07:48 4 whole point of our objections from this morning and the  
12:07:50 5 request for a mistrial, it just goes back to the same  
12:07:52 6 thing. The first words out of Mr. Joshi's mouth was:  
12:07:56 7 They're claim construction arguments.

12:07:57 8 What they're going to try to do is ask the witness  
12:08:01 9 about a preferred embodiment and then come back and close  
12:08:06 10 and say, look, he doesn't do the preferred embodiment, hand  
12:08:06 11 wave, and then go for non-infringement. And that's what  
12:08:10 12 we've been fighting the whole trial.

12:08:10 13 THE COURT: Well, I mean, again, Mr. Saba, you did  
12:08:11 14 not object to any of this discussion on the record today.  
12:08:14 15 So when he first started using, you know, a general  
12:08:18 16 explanation or asking the witness to generally explain  
12:08:23 17 preferred embodiment, I mean, the record will reflect what  
12:08:25 18 it will reflect, but I didn't see you object to any of  
12:08:29 19 that, and I'm hesitant to interrupt.

12:08:32 20 I can assure you, Mr. Joshi, that the claim  
12:08:39 21 construction order did not limit the claim to the preferred  
12:08:43 22 embodiment. And it sounds like to me that's precisely what  
12:08:47 23 you're trying to do here, so I'm going to caution you  
12:08:51 24 against that.

12:08:51 25 MR. JOSHI: Okay. So, then, Your Honor, I'll

12:08:53 1 just -- I'll stop referring to the preferred embodiment,  
12:08:57 2 and I'll refer to the Court's claim construction, if that's  
12:09:00 3 okay.

12:09:00 4 THE COURT: To the construction of the terms. Use  
12:09:04 5 the claims themselves or the Court's claim construction  
12:09:07 6 ruling on the terms.

12:09:09 7 MR. SABA: Your Honor, I'd like to -- I'd like to  
12:09:13 8 say that we would -- for purposes of preservation, we would  
12:09:15 9 like to request another curative instruction, and this is  
12:09:20 10 why.

12:09:21 11 We had -- we moved for a mistrial yesterday. They  
12:09:24 12 said no more. We moved for mistrial today. They said no  
12:09:29 13 more. And here we are right before lunch talking about  
12:09:33 14 preferred embodiments. Every time they say they're not  
12:09:37 15 going to do it, they go right back --

12:09:39 16 THE COURT: So here's what we're going to do,  
12:09:40 17 Mr. Saba. I want you-all to draft an instruction over the  
12:09:45 18 lunch hour about the claims not being limited by the  
12:09:48 19 preferred embodiment, and I will give that instruction  
12:09:52 20 because I do think there is some prejudice here.

12:09:55 21 Mr. Joshi, I'm certainly not saying that it was  
12:09:58 22 intentional, and I'm not accepting everything that Mr. Saba  
12:10:01 23 said about how we got to this point. But you have clearly  
12:10:06 24 admitted that is what you were doing with this last set of  
12:10:09 25 questions for the witness, and I think that's

12:10:11 1 inappropriate. So I will give an instruction along those  
12:10:15 2 lines.

12:10:15 3 I also intend to give the -- the jury an  
12:10:24 4 instruction with respect to the witness's testimony earlier  
12:10:31 5 regarding the claim construction order. I -- I have gone  
12:10:36 6 back and looked at that. And if you-all will give me just  
12:10:40 7 a moment, I can tell you what the question was.

12:10:50 8 All right.

12:10:58 9 (As read): MR. JOSHI: Yes, no problem. That's  
12:11:06 10 very understandable. Look at the bottom of Page 13 of 44  
12:11:10 11 of the Court's claim construction order.

12:11:13 12 Answer: Yes.

12:11:14 13 Question: Do you understand that in this  
12:11:16 14 selecting step that we're looking at, the individual color  
12:11:19 15 must be an exact individual color?

12:11:22 16 Answer: On the bottom of Page 13 in this  
12:11:26 17 construction order, it recites that the Defendants  
12:11:29 18 suggested that it be limited to an exact individual color.  
12:11:33 19 That's what I see on the bottom of the page.

12:11:37 20 Question: What's the last phrase of that  
12:11:40 21 sentence?

12:11:41 22 Answer: And they are correct.

12:11:45 23 That was improper, Mr. Joshi. And, again, you  
12:11:51 24 know, I'm not sure how we got there. I think the witness  
12:11:55 25 may have gotten you there, but definitely your last

12:11:59 1 question there was inappropriate. And I intend to instruct  
12:12:02 2 the jury that you had asked the witness to read from the  
12:12:09 3 Court's claim construction order and that was improper and  
12:12:12 4 that they are to ignore the testimony of the witness that  
12:12:16 5 quoted from the Court's claim construction order.

12:12:19 6 MR. JOSHI: Your Honor, may I just note my  
12:12:22 7 response to that?

12:12:23 8 THE COURT: Of course.

12:12:25 9 MR. JOSHI: I will, of course, obey whatever your  
12:12:28 10 instructions are.

12:12:28 11 THE COURT: Oh, of course.

12:12:29 12 MR. JOSHI: But I can tell you there was no other  
12:12:31 13 way to do it. This is a very important term, the having --  
12:12:34 14 having an individual color.

12:12:35 15 That's just the way the Court wrote it. If you  
12:12:38 16 just take the first part of the sentence, "Defendant says  
12:12:43 17 that," well, that just says it's our position. But when  
12:12:47 18 you add to it the part "and they would be correct," that's  
12:12:50 19 what makes it a Court's definition.

12:12:52 20 So the full sentence says, you know, that --  
12:12:55 21 because before that it says, "they would be correct," then  
12:12:57 22 later on, it says, "they would be incorrect," and we  
12:13:00 23 believe that all of that is needed for proper definition of  
12:13:03 24 these terms.

12:13:05 25 THE COURT: Well, there's a better way to make

12:13:07 1 that argument than having the witness read from the claim  
12:13:10 2 construction order.

12:13:11 3 MR. SABA: Your Honor, may I add something to  
12:13:11 4 that?

12:13:12 5 The last paragraph of the claim construction order  
12:13:15 6 prohibits the parties from commenting on the arguments,  
12:13:18 7 directly or indirectly. That's square in the order, and to  
12:13:21 8 have it out when questioning the witness is totally  
12:13:25 9 inappropriate.

12:13:26 10 THE COURT: Okay. So I'm going to ask the  
12:13:28 11 Plaintiffs to propose an instruction with respect to the  
12:13:31 12 preferred embodiment issue along the lines of the claims  
12:13:36 13 are not limited to the preferred embodiment, in that  
12:13:39 14 nature, and I will give an instruction like that, as well  
12:13:44 15 as the ones that I just read with respect to the claim  
12:13:49 16 construction order.

12:13:50 17 My preference would be to give these instructions  
12:13:59 18 at the conclusion of the witness's testimony. We'll see if  
12:14:04 19 we have any other issues before we get to that point. But  
12:14:07 20 I'm not inclined to give the instruction during the middle  
12:14:11 21 of witness's testimony.

12:14:12 22 Does anyone disagree with that?

12:14:14 23 MR. JOSHI: We do not, Your Honor. And I'll just  
12:14:16 24 add, I'm doing my absolute best here. It's just the way  
12:14:21 25 the claim construction order is written. Their agreed

12:14:24 1 definition, and then there are terms where it says, term  
12:14:27 2 definition, term definition, term definition. Then there  
12:14:30 3 are places where they say, you're right, or you're wrong.  
12:14:30 4 And if we don't include those as part of the term -- you  
12:14:35 5 know, I agree there's a better form that I could have done  
12:14:37 6 this in, but my --

12:14:39 7 THE COURT: Go ahead.

12:14:40 8 MR. JOSHI: -- but the intent here wasn't to get  
12:14:45 9 him to read something --

12:14:47 10 THE COURT: I'm not -- Mr. Joshi, I don't -- I  
12:14:49 11 don't think you did -- I don't -- I'm not accusing you of  
12:14:52 12 doing anything wrong at all. I just think there's a better  
12:14:56 13 way to do it. And read -- having the witness read from the  
12:15:00 14 claim construction order is not the way to do it.

12:15:03 15 MR. JOSHI: Thank you, Your Honor.

12:15:04 16 THE COURT: Yeah, no, I understand.

12:15:07 17 Okay. Anything else?

12:15:09 18 MR. BENNETT: One housekeeping item. We were --  
12:15:14 19 we were going to use lunch for the jury charge and things.  
12:15:19 20 So could we -- could we have a -- like a 6:00 extension  
12:15:24 21 to -- because we're not going to close -- I don't think  
12:15:27 22 there's any chance we're closing --

12:15:29 23 THE COURT: It's not looking like it.

12:15:31 24 MR. BENNETT: Yeah.

12:15:31 25 THE COURT: Okay. 6:00 will be fine.

12:15:32 1 MR. BENNETT: Okay. Thank you, Your Honor.

12:15:33 2 Appreciate that.

12:15:34 3 THE COURT: Thanks.

12:15:36 4 COURT SECURITY OFFICER: All rise.

12:15:39 5 (Recess.)

01:09:24 6 COURT SECURITY OFFICER: All rise.

01:09:25 7 THE COURT: Please be seated.

01:09:27 8 Okay. I have received the Plaintiff's proposed

01:09:32 9 curative instruction with the respect to the preferred

01:09:37 10 embodiment comparison.

01:09:40 11 Mr. Joshi, have you had a opportunity to review

01:09:45 12 that?

01:09:46 13 MR. JOSHI: Yes, yes, Your Honor. And we are fine

01:09:49 14 with all of it except the very last sentence. I don't

01:09:55 15 think there's anything wrong with the letter, you know,

01:09:57 16 talking about accused products in reference to the

01:10:00 17 preferred embodiments.

01:10:02 18 THE COURT: Okay. All right. Mr. Bennett?

01:10:03 19 MR. BENNETT: Well, that's the purpose of the

01:10:05 20 curative instruction is to instruct the jury what the

01:10:08 21 standard is and that whatever they heard that didn't meet

01:10:11 22 that standard, they shouldn't consider it or give any

01:10:15 23 weight to it.

01:10:16 24 THE COURT: Right. And that -- and in my view,

01:10:18 25 the first two sentences do that adequately. I think the

01:10:22 1 first two sentences are appropriate, especially given the  
01:10:25 2 fact that there was no objection during any of that  
01:10:29 3 testimony from the Plaintiff.

01:10:32 4 So I intend to give the first two sentences of the  
01:10:37 5 Plaintiff's proposed instruction.

01:10:39 6 MR. BENNETT: And may I ask about timing,  
01:10:44 7 Your Honor?

01:10:44 8 THE COURT: I intend to do it when the witness  
01:10:47 9 completes all of his testimony. I mean, I'll -- I'll hear  
01:10:50 10 you all now if you think it should be now, but I -- you  
01:10:55 11 know, I would prefer this witness to get off the stand  
01:10:57 12 before we -- I mean, we may have something else come up,  
01:11:00 13 but I'd rather do all of this at once.

01:11:02 14 MR. BENNETT: I don't necessarily disagree. Here  
01:11:05 15 is what I would -- here's what we would like. Here's what  
01:11:08 16 we're asking for, if it be read at the end of cross before  
01:11:15 17 we start in on direct.

01:11:16 18 My concern, our concern, Lone Star's concern is if  
01:11:20 19 we wait until the end of redirect, maybe some recross, the  
01:11:24 20 ideas, memories of what the testimony exactly was might  
01:11:29 21 have faded.

01:11:29 22 So I would like the instruction -- we're asking  
01:11:31 23 that the instruction be read at the close of cross, and  
01:11:36 24 then we'll start in on redirect, and then we're done.

01:11:39 25 MR. JOSHI: So my concern, Your Honor, is that it

01:11:42 1 would appear punitive if you do it after I'm done.

01:11:46 2 THE COURT: I agree with that. We're going to see  
01:11:49 3 where it goes. I hope this will resolve all the issues we  
01:11:52 4 had with the witness's testimony. So there is that.

01:11:54 5 There is a chance that something else may come up,  
01:12:00 6 and I would prefer to do this at once. And I think  
01:12:03 7 Mr. Joshi's got a fair point here.

01:12:06 8 So let me just do it at the very end, and I'll do  
01:12:10 9 it in a very neutral kind of way, and that will solve it.

01:12:13 10 MR. BENNETT: Thank you, Your Honor.

01:12:13 11 THE COURT: Okay. Anything else before we have  
01:12:16 12 the jury brought back in?

01:12:19 13 MR. OLIVER: Should we set up the demonstration  
01:12:21 14 right now and --

01:12:21 15 THE COURT: Yes.

01:12:22 16 MR. OLIVER: Okay.

01:12:22 17 THE COURT: If it's --

01:12:25 18 MR. OLIVER: That would be -- it'll just take a  
01:12:27 19 couple seconds.

01:12:28 20 MR. BENNETT: There is a -- it's a housekeeping  
01:12:30 21 item that's getting prejudicial, which is when they switch  
01:12:36 22 between PDFs, they need to have all of the PDF files that  
01:12:40 23 they intend to use open, because what's happening is they  
01:12:44 24 open their document folder, and all of the exhibits with  
01:12:47 25 the full names of what this -- of what's in them, whether

01:12:48 1 admissible or not --

01:12:48 2 THE COURT: Can we keep that from happening  
01:12:52 3 somehow?

01:12:52 4 MR. OLIVER: Yes. That's easy.

01:12:52 5 MR. JOSHI: We can --

01:12:52 6 MR. OLIVER: We'll just unplug the cable.

01:12:53 7 MR. JOSHI: No, don't unplug it. We'll just have  
01:12:53 8 him turn off the screen, we'll get the document, then we'll  
01:12:57 9 turn the screen back on.

01:12:58 10 MR. BENNETT: That's fine. However we do it,  
01:13:00 11 that's fine.

01:13:01 12 MR. OLIVER: One final thing to note, Your Honor,  
01:13:04 13 because I don't think that Dr. Ducharme will be on the  
01:13:06 14 stand for the rest of the afternoon, there's still a live  
01:13:11 15 objection to the demonstratives that Plaintiff wants to use  
01:13:14 16 with their next witness that has not been ruled upon by the  
01:13:18 17 Court.

01:13:18 18 THE COURT: Let's don't deal with that right now.

01:13:21 19 MR. OLIVER: Okay. Just wanted to make sure it  
01:13:25 20 was on your radar.

01:13:25 21 THE COURT: Let's get the demonstration set up and  
01:13:28 22 bring the jury in. But thank you for bringing it to my  
01:13:33 23 attention.

01:15:04 24 Are we ready?

01:15:06 25 MR. BENNETT: Just one last question, Your Honor,

01:15:08 1 or raise this and deal with it later, perhaps.

01:15:10 2 But in connection with the curative instructions,  
01:15:13 3 we did ask for one with the first mistrial motion that we  
01:15:19 4 filed that deals exactly with demonstrations and this  
01:15:20 5 witness's testimony --

01:15:20 6 THE COURT: So let me tell you what my thoughts  
01:15:23 7 about that are, Mr. Bennett. I know that was made. I  
01:15:27 8 think that -- I think that the questioning that the  
01:15:31 9 Plaintiffs had, frankly dealt with all of that. And if it  
01:15:39 10 didn't, I think this instruction I'm getting ready to give  
01:15:43 11 essentially does that, as well.

01:15:45 12 MR. BENNETT: Fair enough.

01:15:47 13 THE COURT: And I do think any prejudice that  
01:15:49 14 occurred has been alleviated.

01:15:51 15 MR. BENNETT: Okay. Thank you, Your Honor.

01:16:00 16 THE COURT: All right. Are we ready, Mr. Joshi?

01:16:03 17 MR. JOSHI: Yes, Your Honor.

01:16:04 18 THE COURT: Can I ask the witness, if you would  
01:16:09 19 please move the mic over toward you.

01:16:16 20 And let's have the jury brought in.

09:02:02 21 COURT SECURITY OFFICER: All rise for the jury.

01:16:23 22 (Jury in.)

01:16:35 23 THE COURT: Please be seated.

01:16:39 24 Okay. Mr. Joshi, you may continue.

01:16:43 25 BY MR. JOSHI:

01:16:43 1 Q. Welcome back, Dr. Ducharme.

01:16:45 2 A. Thank you.

01:16:45 3 Q. What I have here is Exhibit P-11 which is this monitor.

01:16:53 4 A. Yes.

01:16:54 5 Q. What is presently showing now is a color whose R

01:16:59 6 component value is 0, green component value is 240, and

01:17:08 7 blue component value is 255. If I change the color

01:17:18 8 component adjustment for the green color, will this change

01:17:22 9 the screen?

01:17:23 10 A. Yes.

01:17:24 11 Q. Will this color change on the screen? Same answer?

01:17:29 12 A. Yes.

01:17:29 13 Q. Okay. Thank you.

01:17:31 14 MR. JOSHI: Mr. Oliver, could you adjust -- in the

01:17:38 15 menu bring up the -- okay. So we'll just go to the next

01:17:44 16 slide.

01:17:46 17 BY MR. JOSHI:

01:17:51 18 Q. Again, with reference to Exhibit 11, I'm showing you a

01:17:57 19 color with a red component of 255, green component of 240,

01:18:02 20 and blue component of 0. If I change the color component

01:18:11 21 adjustment for the color green, will this color change on

01:18:17 22 the screen?

01:18:18 23 A. Yes.

01:18:20 24 MR. JOSHI: Next slide, please.

01:18:22 25 BY MR. JOSHI:

01:18:23 1 Q. Dr. Ducharme, with reference to Exhibit 11, I'm showing  
01:18:28 2 you a color which has the following color components:  
01:18:33 3 red, 255; green, 0; blue 240. If I were to change the  
01:18:42 4 color component adjustment for blue, will this color change  
01:18:50 5 on the screen?

01:18:51 6 A. Yes.

01:18:51 7 MR. JOSHI: Next slide.

01:18:53 8 BY MR. JOSHI:

01:18:55 9 Q. Dr. Ducharme, I'm showing you a color which has the  
01:18:59 10 following color components: red, 0; green, 255; blue 240.  
01:19:07 11 If I change the color component adjustment for the color  
01:19:11 12 blue, will this color change on the screen?

01:19:14 13 A. Yes.

01:19:21 14 MR. JOSHI: Next slide, please.

01:19:25 15 BY MR. JOSHI:

01:19:33 16 Q. Dr. Ducharme, can white be an individual color under  
01:19:39 17 the Court's construction of the term "individual color"?

01:19:44 18 A. Yes.

01:19:45 19 Q. There are several different colors shown on there. At  
01:20:03 20 the top left is a color having the components R, 255;  
01:20:10 21 green, 255; blue, 255. If I change the color -- and then  
01:20:27 22 the next color, next to it, has a red component of 228,  
01:20:33 23 green component of 228, blue component of 228.

01:20:39 24 The color next to it has a red component of 200,  
01:20:44 25 green component of 200, and blue component of 200.

01:20:48 1 Next to that, the color has a red component  
01:20:52 2 of 160, green component of 160, and blue component of 160.  
01:20:58 3 At the bottom, the first color has a red component  
01:21:03 4 of 128, a green component of 128, and a blue component  
01:21:10 5 of 128.  
01:21:11 6 Next to it, the red component is 100, the green  
01:21:21 7 component is 100, and the blue component is 100.  
01:21:25 8 And the bottom last from the right, there is a  
01:21:28 9 color with components of red at 64, green at 64, and blue  
01:21:33 10 at 64.  
01:21:34 11 And finally, at the bottom right of the screen,  
01:21:37 12 there is a color with red component of 32, green component  
01:21:42 13 of 32, and blue component of 32.  
01:21:46 14 Dr. Ducharme, are all of these white colors?  
01:21:51 15 A. Yes.  
01:21:54 16 Q. Okay. And for any of these colors that are shown  
01:22:03 17 there, if I were to change the color component adjustment  
01:22:08 18 for red, will that change -- will the color change on the  
01:22:18 19 screen?  
01:22:19 20 A. Will you just repeat your question?  
01:22:31 21 Q. Sure. Please. Yeah, please go ahead.  
01:22:35 22 A. Repeat the question for me.  
01:22:36 23 Q. Oh, you want me to repeat the question?  
01:22:39 24 A. Yes, please.  
01:22:40 25 Q. I'll be happy to.

01:22:43 1 A. Just the last part.

01:22:44 2 Q. For any one of these colors on the screen, if I were to

01:22:47 3 change color component adjustment on an accused product for

01:22:55 4 the color red, will the color change on the screen?

01:22:59 5 A. Yes, the color of each one of these will change.

01:23:06 6 Q. Okay.

01:23:15 7 A. It may be a little hard to see with your setup on the

01:23:19 8 one on the bottom right, but...

01:23:21 9 Q. Would you answer me the same if I asked you the same

01:23:25 10 question about color component adjustment for green?

01:23:27 11 A. Yes.

01:23:28 12 Q. Will you answer me the same if I were to ask you the

01:23:31 13 same question about color component adjustment for blue?

01:23:35 14 A. Yes.

01:23:37 15 MR. JOSHI: We're done with this demonstrative,

01:23:40 16 Your Honor.

01:23:41 17 THE COURT: Okay.

01:23:49 18 MR. JOSHI: Thank you, Mr. Oliver.

01:23:52 19 BY MR. JOSHI:

01:24:26 20 Q. Dr. Ducharme, yesterday you discussed this slide with

01:24:32 21 the jury.

01:24:33 22 A. Yes.

01:24:34 23 THE COURT: Mr. Joshi?

01:24:35 24 MR. JOSHI: Thank you, Your Honor.

01:24:38 25 BY MR. JOSHI:

01:24:41 1 Q. It says "pass" at the end of that slide there, the two  
01:24:46 2 columns which say: Pass, pass, pass, pass, up to down.  
01:24:51 3 Did you write that or did the machine write it?  
01:24:55 4 A. Did what machine --  
01:24:57 5 Q. The word "pass" in that slide. Who -- who -- who added  
01:25:01 6 "pass" to that slide, the word?  
01:25:04 7 A. It's -- this is an Excel spreadsheet. So when you say  
01:25:15 8 machine, I'm not sure what you mean. Do you mean the  
01:25:17 9 computer or what --  
01:25:17 10 Q. Let me clarify. You did testing, this slide shows test  
01:25:22 11 results?  
01:25:23 12 A. Yes.  
01:25:23 13 Q. Okay. To -- to do the test, you used a machine, I  
01:25:29 14 assume?  
01:25:29 15 A. What kind of machine? I mean --  
01:25:31 16 Q. A device, a sensor?  
01:25:33 17 A. Okay. To -- to generate -- I'm not exactly sure  
01:25:45 18 what -- which part of the -- of the -- you know --  
01:25:45 19 Q. All right.  
01:25:50 20 A. -- can you be more clear?  
01:25:51 21 Q. Yes, yes, I'll try. Do you see there are columns x  
01:25:55 22 and y on --  
01:25:55 23 A. I see the columns.  
01:25:56 24 Q. Okay. And there's data in there, correct?  
01:25:59 25 A. Yes.

01:25:59 1 Q. Where did that data come from?

01:26:01 2 A. So the color analyzer that I used, that I described

01:26:05 3 yesterday, outputs the x and y values for whatever light

01:26:09 4 you're pointing it at.

01:26:10 5 Q. Okay. Okay. And then the color analyzer data you took

01:26:16 6 and you put it in an Excel spreadsheet?

01:26:21 7 A. Yes.

01:26:22 8 Q. Okay. And the words "pass," you entered those?

01:26:25 9 A. No -- well, I allowed Excel -- I used a conditional

01:26:29 10 statement in Excel --

01:26:29 11 Q. Right.

01:26:30 12 A. -- to evaluate the difference between the row that's

01:26:35 13 marked white --

01:26:36 14 Q. Yes.

01:26:37 15 A. -- I compared -- I'm sorry. It's actually the row that

01:26:41 16 is marked Row 2 -- I guess it's No. 2 --

01:26:41 17 Q. Right.

01:26:49 18 A. Row 2 is what I call my control color. So Rows 3

01:26:54 19 through 12 in x were all compared -- and by compared, I

01:26:59 20 mean subtracted from that control value to get a

01:27:03 21 difference.

01:27:03 22 Q. Okay.

01:27:04 23 A. And if that difference was smaller than .002, then I

01:27:14 24 had Excel provide the word "pass."

01:27:18 25 Q. Yes.

01:27:19 1 A. If it didn't, it provides the word "fail."

01:27:22 2 Q. Okay. So if I understand correctly, the data came from

01:27:26 3 the analyzer, and the pass came from the standard that you

01:27:32 4 set on Excel; is that fair?

01:27:35 5 A. Yes.

01:27:36 6 Q. Okay. And if I were to take a --

01:27:40 7 MR. JOSHI: Would it be possible to zoom in a bit

01:27:42 8 on the (x,y)? No, I'm sorry. We're here, so...

01:28:04 9 BY MR. JOSHI:

01:28:04 10 Q. So if we look at just a few values of (x,y), what I'm

01:28:10 11 noticing is let's say between the row that has a number

01:28:13 12 that ends with 67, correct -- x value ends with 67?

01:28:18 13 A. Yes.

01:28:18 14 Q. And the y ends with, I believe, 6 -- is it 8?

01:28:24 15 A. 66.

01:28:26 16 Q. 66. And then below the numbers are slightly different.

01:28:31 17 The first one, the x ends in 69, and then the y ends in 65.

01:28:36 18 Do you see that?

01:28:37 19 A. Yes.

01:28:37 20 Q. Okay. And the reason why you -- you believe those

01:28:46 21 differences are insignificant is because human beings

01:28:51 22 cannot perceive a difference that small; is that correct?

01:28:54 23 A. No.

01:28:55 24 Q. What is the reason why you said pass even though the

01:28:59 25 numbers are different?

01:29:01 1 A. With any scientific measurement, if it's based on data  
01:29:08 2 that you get from a sensor, some kind of measurement  
01:29:14 3 device, there is -- the limit of the measurement, the  
01:29:19 4 smallest change, we'll say, that you can measure is  
01:29:26 5 determined by what's called the tolerance.

01:29:29 6 So this color analyzer has a color -- it's  
01:29:34 7 actually a chromaticity difference. Chromaticity is just a  
01:29:41 8 bench word for color -- chromaticity difference of plus or  
01:29:43 9 minus .002.

01:29:43 10 Q. Okay.

01:29:45 11 A. So what that means is that if we didn't put any light  
01:29:49 12 into the sensor, it might give us values that are that  
01:29:53 13 small, and they would randomly fluctuate because electronic  
01:29:59 14 signals have what's called a noise floor. So they would  
01:30:04 15 randomly fluctuate. So the lowest point that you can trust  
01:30:08 16 the numbers that an instrument gives you in a scientific  
01:30:14 17 experiment is the tolerance of the device. So numbers may  
01:30:19 18 change below that, but they can't be trusted. It could  
01:30:22 19 just be random fluctuations in the instrument.

01:30:26 20 Q. Okay. But when there's so much change -- where you can  
01:30:30 21 see they're changing row after row after row after row  
01:30:34 22 after row, it's not as if the change is only for one or two  
01:30:38 23 rows. Do you see that?

01:30:46 24 A. You're talking about down the column, right?

01:30:49 25 Q. Correct.

01:30:50 1 A. I mean, down the column, I would expect those numbers  
01:30:53 2 to change. If they change greater than the tolerance  
01:30:56 3 value, a bigger number, then that column on the right would  
01:31:01 4 say fail. And I have no control other than, other than I  
01:31:04 5 created the condition. But the numbers, they fluctuate but  
01:31:09 6 I would expect them to, as I would with any scientific  
01:31:12 7 measurement.

01:31:13 8 Q. Did you do any testing to see what change occurred to  
01:31:20 9 the drive signal of the display as these numbers change?

01:31:25 10 A. What did you say again?

01:31:26 11 Q. The drive signal of the display.

01:31:29 12 A. No.

01:31:30 13 Q. Did you do any testing to check if the crystal angle of  
01:31:38 14 the display changed because of these changes in the  
01:31:42 15 numbers?

01:31:42 16 A. If the crystal changed?

01:31:44 17 Q. The angle, yes.

01:31:46 18 A. The crystal angle of --

01:31:48 19 Q. The display.

01:31:53 20 A. No.

01:31:53 21 Q. Okay. Do you know who Mr. Perdue is?

01:32:10 22 A. I recognize the name. I believe he's a witness in this  
01:32:10 23 case, but I --

01:32:18 24 Q. He is Lone Star's damages expert.

01:32:22 25 Have you spoken to him in the course of this

01:32:25 1 litigation?

01:32:25 2 A. Oh, yeah. Yes, I have.

01:32:27 3 Q. Did you talk to Mr. Perdue about whether patents and  
01:32:32 4 license agreements were comparable to the '435 patent prior  
01:32:39 5 to submitting your infringement report in this case?

01:32:42 6 A. I don't recall when I talked to him and when I  
01:32:49 7 submitted this, no.

01:32:50 8 Q. And then if you don't recall that, then I'll still ask  
01:32:54 9 the next question anyway.

01:32:56 10 For which licenses did you analyze the patents and  
01:33:02 11 inform Mr. Perdue of technical comparability to the '435  
01:33:07 12 patent?

01:33:07 13 MR. SABA: Your Honor, objection, foundation.

01:33:10 14 THE COURT: Can you lay a foundation?

01:33:11 15 MR. JOSHI: Sure.

01:33:13 16 BY MR. JOSHI:

01:33:18 17 Q. Now that I have brought up Mr. Perdue, do you recall  
01:33:22 18 having a conversation with him?

01:33:23 19 A. I remember having a conversation with him. I don't  
01:33:32 20 remember if it was about ASUS. I was -- it was probably  
01:33:37 21 several -- it was several years ago. So --

01:33:41 22 Q. But you didn't have any conversation with Mr. Perdue in  
01:33:42 23 the context of this litigation; is that correct?

01:33:46 24 A. I -- I honestly, I don't recall. I can't -- I don't  
01:33:52 25 remember the specifics of a conversation with him about

01:33:54 1 this case.

01:33:55 2 Q. But to the best of your recollection, the conversation  
01:33:59 3 was many years ago?

01:34:00 4 A. It was -- it was over a year ago to the best of my  
01:34:04 5 recollection.

01:34:04 6 Q. Okay. Do you recall if the conversation was about  
01:34:07 7 license agreements?

01:34:09 8 A. I don't recall any discussions with anyone about  
01:34:16 9 licensing.

01:34:16 10 Q. Okay. Thank you.

01:34:19 11 Yesterday, Dr. Ducharme, you said that calibration  
01:34:57 12 of a monitor is recommended every 200 to 300 hours. Do you  
01:35:11 13 recall saying that?

01:35:12 14 A. I don't know if I used the word "calibration." I  
01:35:16 15 believe I said -- well, can you -- can we read the  
01:35:21 16 transcript back? I can't remember my exact phrasing.

01:35:24 17 Q. Well, let me ask you another question. You didn't  
01:35:30 18 present any evidence today or yesterday that ASUS  
01:35:34 19 recommends its users to calibrate the monitor every 200 to  
01:35:42 20 300 hours?

01:35:45 21 A. I -- no, I don't believe I did.

01:35:47 22 Q. Okay. Earlier today, I showed you a slide on double  
01:36:21 23 patenting that you used yesterday. Do you recall that?

01:36:24 24 A. Yes.

01:36:24 25 Q. Okay. And on that slide, there was a mention of

01:36:43 1 look-up table. Do you recall?

01:36:46 2 A. Yes.

01:36:50 3 Q. In your testimony today and yesterday, the only reason  
01:36:53 4 that you gave for the difference between the '012 and the  
01:37:00 5 '435 patent was the look-up table; is that correct?

01:37:02 6 MR. SABA: Your Honor, I'm going to object to  
01:37:04 7 asked and answered. We went into this this morning.

01:37:07 8 MR. JOSHI: That was a different question I asked.  
01:37:10 9 I asked about the slide. Now I'm asking about the  
01:37:13 10 testimony.

01:37:14 11 THE COURT: All right. Overruled.

01:37:14 12 MR. SABA: Thank you, Your Honor.

01:37:18 13 A. Can you ask the question again?

01:37:20 14 BY MR. JOSHI:

01:37:21 15 Q. Yes. In your testimony today and yesterday, the only  
01:37:25 16 reason that you have presented for there being a difference  
01:37:28 17 between the '012 patent and the '435 patent is the look-up  
01:37:33 18 table?

01:37:34 19 A. I don't believe that was my testimony. I said that's  
01:37:36 20 one of the reasons.

01:37:37 21 Q. But you didn't give any other reasons, did you?

01:37:41 22 A. I believe I said that in the '012 patent, with the  
01:37:49 23 look-up tables, you're adjusting this look-up table. And  
01:37:54 24 in the '435, you're affecting each single pixel.

01:38:00 25 I -- there was some phrasing where I said that,

01:38:02 1 you know, they were affecting all the pixels in the '012  
01:38:06 2 and going through each pixel in the '435. I don't remember  
01:38:10 3 exactly what I said, but that's what I know. So I assume  
01:38:13 4 that's what I said.

01:38:14 5 Q. Okay. But all of that discussion was about look-up  
01:38:23 6 tables, correct, versus arithmetic and logical operations?

01:38:32 7 A. I'm a little unclear as to what you're asking. All of  
01:38:36 8 what discussions was about look-up -- I don't --

01:38:39 9 Q. Yesterday, and maybe even today in your discussion with  
01:38:41 10 Mr. Saba, you differentiated the '012 patent from the '435  
01:38:47 11 patent, correct?

01:38:48 12 A. Yes.

01:38:49 13 Q. And any and all the differences that you pointed  
01:38:56 14 between the two patents related to the look-up table,  
01:38:59 15 correct?

01:38:59 16 A. Yes.

01:38:59 17 Q. Okay. Just a couple more questions.

01:39:35 18 MR. JOSHI: Andrew, I'm sorry to disturb you, but  
01:39:40 19 could you please pull up DX-1 for me? It's the patent, the  
01:39:45 20 '435 patent. Would you please pull up Claim 1? Could you  
01:40:22 21 please high -- blow up the identifying limitation of  
01:40:24 22 Claim 1?

01:40:55 23 BY MR. JOSHI:

01:40:56 24 Q. Dr. Ducharme, is it your position that with respect to  
01:40:59 25 the identifying limitation, when a red slider in an accused

01:41:10 1 ASUS device is adjusted, then every input pixel having a  
01:41:21 2 value of red greater than 0 is identified?

01:41:25 3 A. No.

01:41:37 4 Q. Could you -- could you tell me what your position is in  
01:41:41 5 that regard?

01:41:42 6 A. This -- this limitation discusses identifying pixels  
01:41:49 7 that meet certain arithmetic and logical operations.

01:41:56 8         And earlier we talked about when the red pixel N  
01:42:01 9 needs to be greater than an argument plus green and plus  
01:42:05 10 blue, and we talked about that, then that is, I mean, a  
01:42:08 11 very good example of how you could use arithmetic and  
01:42:12 12 logical operations.

01:42:13 13         Just remember, arithmetic operations are plus,  
01:42:18 14 minus, multiplication, and divide; and then logical  
01:42:22 15 operations are equals, less than, greater than.

01:42:25 16         But in the same patent, Column 9, it teaches that  
01:42:31 17 the designer or whoever is using this method can combine  
01:42:38 18 these logical operations.

01:42:40 19         So, I mean, I could imagine a scenario where, I  
01:42:46 20 don't know for what purpose, you could design an  
01:42:51 21 identifying -- or arithmetic and logical operation using a  
01:42:53 22 combination of logical operators that would select the  
01:42:57 23 pixels of 0. It doesn't make any sense to me to do that,  
01:43:02 24 but the patent teaches that the designer has the ability to  
01:43:07 25 combine these operators and still meet this limitation.

01:43:10 1 Q. So in your infringement analysis of the accused  
01:43:19 2 products, which input pixels in the accused products did  
01:43:31 3 you identify and which input pixels -- let me start that  
01:43:35 4 again.

01:43:35 5 And I'm only talking about input pixels having  
01:43:38 6 red.

01:43:38 7 And my question is: For the accused products,  
01:43:44 8 what was the value of red that determined whether you  
01:43:50 9 selected certain input pixels and didn't select certain  
01:43:57 10 input pixels?

01:43:58 11 A. In the accused products, it was a value greater than 0.

01:44:03 12 Q. Okay. And because of that manner of selecting the  
01:44:14 13 input pixels in the accused products, do you believe that  
01:44:19 14 ASUS products infringe the Limitation (e) of Claim 1?

01:44:34 15 A. Yes.

01:44:42 16 Q. Okay. Thank you, Dr. Ducharme.

01:44:44 17 MR. JOSHI: We're done, Your Honor. Thank you.

01:44:46 18 THE COURT: Redirect?

01:44:47 19 MR. SABA: Yes, Your Honor. A few questions  
01:44:48 20 briefly.

01:44:51 21 REDIRECT EXAMINATION

01:45:03 22 BY MR. SABA:

01:45:27 23 Q. Thank you, Dr. Ducharme.

01:45:28 24 I just wanted to ask a few brief questions based  
01:45:31 25 on some of the questions that Mr. Joshi was asking you

01:45:35 1 about.

01:45:35 2 You still have your reports in front of you,  
01:45:37 3 correct?

01:45:38 4 A. Yes, I do.

01:45:38 5 Q. Let me start talking -- let me ask you some questions  
01:45:43 6 here about the color-changing technology.

01:45:53 7 Before lunch and shortly thereafter, Mr. Joshi had  
01:45:56 8 asked you a lot of questions about the color-changing  
01:46:00 9 technology and implying that the ASUS products didn't  
01:46:03 10 infringe. You remember that?

01:46:04 11 A. Yes.

01:46:05 12 Q. All right. And I don't really believe that he gave you  
01:46:12 13 a fair chance to explain, and so I want to be -- I want to  
01:46:16 14 give you a chance to explain briefly.

01:46:22 15 MR. SABA: And, Denver, can you put on the screen  
01:46:24 16 the six bars, please?

01:46:28 17 BY MR. SABA:

01:46:28 18 Q. We talked about this yesterday. We're not pulling out  
01:46:31 19 any displays.

01:46:32 20 I want you -- you see the color chart in front of  
01:46:34 21 you, right?

01:46:35 22 A. Yes.

01:46:37 23 Q. Now, assuming that this color array is being displayed  
01:46:42 24 on the 3-axis ASUS display?

01:46:44 25 A. Yes.

01:46:44 1 Q. I change red, hue or saturation, which colors will  
01:46:50 2 change?

01:46:50 3 A. The red color on the left, denoted red 100, green --  
01:46:59 4 I'm sorry, green 0, blue 0, and then I'm going to look  
01:47:02 5 down, any one of those that contains red is going to  
01:47:05 6 change.

01:47:05 7 So on the far right, with magenta and yellow, red  
01:47:08 8 is 100 -- I'm speaking about magenta. Red is 100, green  
01:47:13 9 is 0, blue is 100. That will change. And then yellow, red  
01:47:20 10 is 100, green is 100, and blue is 0. It's on the right.  
01:47:24 11 That will change, as well.

01:47:27 12 Q. So the colors that will change are red?

01:47:29 13 A. Yes.

01:47:29 14 Q. Purple?

01:47:30 15 A. Yes.

01:47:30 16 Q. And yellow?

01:47:32 17 A. Yes.

01:47:32 18 Q. Okay. Now, if we're on a 6-axis ASUS display and I  
01:47:36 19 change red, which colors will change?

01:47:39 20 A. Red.

01:47:39 21 Q. Just red?

01:47:40 22 A. Yes.

01:47:40 23 Q. Not purple?

01:47:43 24 A. No.

01:47:44 25 Q. Why?

01:47:47 1 A. The selection of these received input pixels is based  
01:47:56 2 on arithmetic and logical operations, so pluses and  
01:48:03 3 minuses, greater thans and equal tos. The 3-axis monitor  
01:48:09 4 looks for just those three colors, red, green, blue, and  
01:48:15 5 applies a set of arithmetic and logical operations to  
01:48:17 6 determine which of the pixels in the rest of the screen  
01:48:20 7 have one of those colors that you selected.

01:48:23 8         When you display the same pattern on a 6-axis  
01:48:26 9 monitor, it's a different set of arithmetic and logical  
01:48:31 10 operators. They have different code -- different source  
01:48:36 11 code or different -- different functions running in their  
01:48:40 12 brains, as I called it yesterday.

01:48:42 13         So as the patent is -- teaches -- and by teaches,  
01:48:47 14 we mean it's in the specification, it explains that the  
01:48:51 15 designer of someone that's going to use this method can use  
01:48:57 16 logical operators, arithmetic operators, and you can use  
01:49:02 17 them in different ways and in combinations, and it's very  
01:49:05 18 important.

01:49:06 19         So does that answer your question?

01:49:08 20 Q. Yes, sir.

01:49:09 21         We've been talking about -- well, let me ask you  
01:49:12 22 this question. Is all of that with your -- consistent with  
01:49:16 23 your opinion of infringement?

01:49:18 24 A. Yes.

01:49:18 25 Q. We've been talking about 3-axis, and we are -- we've

01:49:21 1 been talking about 6-axis, right?

01:49:23 2 A. Yes.

01:49:23 3 Q. But is 3 or 6 or 25 necessary to infringe the claims of

01:49:29 4 the '435?

01:49:33 5 A. No.

01:49:34 6 Q. So could I have a 20-axis control monitor that would

01:49:38 7 still infringe upon the '435?

01:49:41 8 A. Yes.

01:49:42 9 Q. If I had -- excuse me.

01:49:45 10 Mr. Joshi was asking you about the -- it was the

01:49:47 11 black and white slide; do you remember that?

01:49:48 12 A. Yes.

01:49:49 13 Q. Does white change the opinions of your analysis?

01:49:52 14 A. No.

01:49:53 15 Q. And do the ASUS monitors that you looked at and you

01:49:56 16 rendered an opinion on, is all of the things we talked

01:49:59 17 about consistent with your opin -- opinion of infringement?

01:50:05 18 A. Yes.

01:50:05 19 Q. All right. Thank you, sir.

01:50:06 20 MR. JOSHI: Nothing from us, Your Honor.

01:50:09 21 MR. SABA: I'm not done yet, Mr. Joshi. Thank

01:50:12 22 you.

01:50:12 23 MR. JOSHI: I'm sorry.

01:50:15 24 BY MR. SABA:

01:50:15 25 Q. Mr. Joshi was also talking to you about brightness and

01:50:19 1 gain. Do you remember that?

01:50:19 2 A. Yes.

01:50:20 3 Q. All right. And he asked you whether or not gain,

01:50:23 4 brightness, were actually included in the Court's

01:50:27 5 construction. Do you remember that?

01:50:28 6 A. Yes.

01:50:29 7 Q. I don't believe he gave you an opportunity to --

01:50:33 8 MR. SABA: May I approach, Your Honor?

01:50:35 9 THE COURT: You may.

01:50:36 10 BY MR. SABA:

01:50:37 11 Q. I don't believe he gave you an opportunity to state the

01:50:41 12 definition of hue and saturation, so I'm going to ask you,

01:50:45 13 what's the construction of hue?

01:50:46 14 A. It is one, tint -- sorry -- two, graduation [sic] or

01:50:55 15 shade of a color or color component; or three, the angle

01:50:59 16 between one color or color component and the other

01:51:03 17 colors -- colors or color components characterized in a

01:51:06 18 particular color space.

01:51:08 19 Q. Did you say -- I'm sorry. Did you say shade or color?

01:51:12 20 A. Yes.

01:51:12 21 Q. Tint?

01:51:14 22 A. Yes.

01:51:14 23 Q. What is the definition of saturation?

01:51:22 24 A. The Court's construction order states that saturation

01:51:26 25 is, one, the intensity of a color or color component

01:51:31 1 characterized in a particular color space or, two,  
01:51:34 2 vividness of hue.

01:51:35 3 Q. So does it matter what Mr. Joshi is contending is gain  
01:51:41 4 or brightness if it fits the definition of the  
01:51:46 5 construction?

01:51:46 6 MR. JOSHI: Objection.

01:51:49 7 THE COURT: What's the objection?

01:51:50 8 MR. JOSHI: He's -- he's asking what is and isn't  
01:51:54 9 included in the claim construction.

01:51:58 10 MR. SABA: Your Honor, I'm just responding to  
01:52:00 11 Mr. Joshi's cross where we went into this, and he said that  
01:52:04 12 brightness and gain were not. And I'm just asking the  
01:52:07 13 witness of the Court's proper construction of the terms.

01:52:10 14 THE COURT: Can you --

01:52:10 15 MR. JOSHI: The construction is what it is,  
01:52:12 16 Your Honor.

01:52:12 17 THE COURT: Overruled.

01:52:17 18 BY MR. SABA:

01:52:17 19 Q. Let me rephrase the question, just to be clear. If  
01:52:20 20 there is any sort of color change that meets one of the  
01:52:24 21 definitions of hue or saturation, does that infringe upon  
01:52:27 22 the claim?

01:52:28 23 A. Yes.

01:52:43 24 Q. We talked a little bit -- Mr. Joshi was asking you a  
01:52:47 25 little bit about the MediaTek source code. Do you remember

01:52:49 1 that?

01:52:49 2 A. Yes.

01:52:49 3 Q. All right. First, how did Lone Star get the source

01:52:54 4 code from MediaTek?

01:52:57 5 A. It was -- a request was made as part of what's called

01:53:02 6 the interrogatories where certain things were requested,

01:53:06 7 and it was a response to that.

01:53:15 8 Q. Through the litigation, correct?

01:53:17 9 A. Through the litigation.

01:53:19 10 Q. All right. Do you recall -- in rendering your

01:53:29 11 opinions, you relied upon some --

01:53:31 12 MR. SABA: Thank you, Denver.

01:53:33 13 BY MR. SABA:

01:53:34 14 Q. -- some information called responses to

01:53:35 15 interrogatories. Do you remember that?

01:53:36 16 A. Yes.

01:53:37 17 Q. All right. And ASUS provided some responses to

01:53:39 18 interrogatories in this case?

01:53:40 19 A. Yes.

01:53:41 20 Q. Do you remember what they said about the information

01:53:43 21 regarding the specific MediaTek chips in at least some of

01:53:48 22 their devices?

01:53:49 23 A. That the responses of what was produced is

01:53:55 24 representative of the code used for the color adjustment

01:53:58 25 functions.

01:53:58 1 Q. Okay. Let me be more specific.

01:54:00 2 MR. SABA: Can I approach, Your Honor?

01:54:01 3 THE COURT: You may.

01:54:03 4 BY MR. SABA:

01:54:04 5 Q. I want to refresh your recollection.

01:54:13 6 MR. JOSHI: Objection. Mischaracterization,

01:54:15 7 Your Honor.

01:54:16 8 THE COURT: Overruled.

01:54:17 9 MR. SABA: Thank you, Your Honor.

01:54:19 10 BY MR. SABA:

01:54:20 11 Q. Dr. Ducharme, do you remember what -- what ASUS said

01:54:23 12 with regard to what information do you have in your --

01:54:32 13 across the accused devices with regard to MediaTek?

01:55:34 14 A. So the -- just -- it says that the information is

01:55:36 15 representative data for the products identified.

01:55:39 16 Q. Yeah. And how many products did they identify?

01:55:41 17 A. How many what?

01:55:42 18 Q. How many products were -- how many MediaTek scaler

01:55:45 19 chips were identified by ASUS?

01:55:49 20 A. Well, it looks like there's one, two, three, four,

01:55:53 21 five, six.

01:55:55 22 Q. Right. And I believe one is for a projector, right?

01:56:00 23 A. Yes.

01:56:00 24 Q. All right. So four -- four or five, I can't

01:56:00 25 remember --

01:56:05 1 A. One, two, three, four, five.

01:56:05 2 Q. Right. So did they provide all of the -- anyway, so

01:56:11 3 you had said that then --

01:56:16 4 MR. SABA: Your Honor, may we publish Exhibit 29,

01:56:20 5 Plaintiff's 29, which is the interrogatory responses?

01:56:22 6 MR. JOSHI: No objection.

01:56:24 7 MR. SABA: Thank you.

01:56:26 8 THE COURT: Yes.

01:56:29 9 MR. SABA: May I approach, Your Honor?

01:56:32 10 THE COURT: You may.

01:56:33 11 BY MR. SABA:

01:56:54 12 Q. Dr. Ducharme, if you could look at your screen. Thank

01:56:57 13 you very much. It says: The following table sets forth

01:57:00 14 the representative data for the products identified in the

01:57:03 15 complaint as agreed by the parties.

01:57:04 16 Okay. Is this what you were talking about a

01:57:07 17 second ago?

01:57:07 18 A. Yes.

01:57:08 19 Q. And then tell me where -- well, you've got -- you know,

01:57:09 20 the first product here, PA27AC -- there we go -- the second

01:57:14 21 one under there, those are media -- have been identified as

01:57:19 22 having MediaTek chips, correct?

01:57:21 23 A. Yes.

01:57:21 24 Q. And then you've got two more at the bottom.

01:57:30 25 MR. SABA: And then the one above that, Denver.

01:57:35 1 BY MR. SABA:

01:57:40 2 Q. And then they provided -- excuse me.

01:57:43 3 Did ASUS provide the scaler model number?

01:57:47 4 A. In the table it's identified, yes.

01:57:50 5 Q. Right. And so that information was included in, I

01:57:54 6 believe you said, the interrogatories?

01:57:56 7 A. Yes.

01:57:57 8 Q. Right. And MediaTek provided information back,

01:58:01 9 correct?

01:58:03 10 A. Yes.

01:58:04 11 Q. All right. Do you believe that what MediaTek provided

01:58:14 12 back was relevant or related to the ASUS products?

01:58:19 13 A. Yes.

01:58:19 14 Q. Do you have any reason to dispute that whatever they

01:58:24 15 produced in source code was not what it actually appeared

01:58:27 16 to be?

01:58:28 17 A. No.

01:58:28 18 Q. And you reviewed the code, correct?

01:58:30 19 A. Yes.

01:58:31 20 Q. Yeah. Do you have your copy of your report handy?

01:58:35 21 A. Yes.

01:58:36 22 Q. Could you grab it really quick? I'm not going to go

01:58:40 23 deep on this, but I want to ask you a question. Can you

01:58:42 24 give the ladies and gentlemen of the jury just one example

01:58:45 25 of how you used the source code to formulate your opinions?

01:58:49 1 Nothing detailed.

01:58:53 2 A. I pointed to some of the functions indicating

01:59:02 3 arithmetic and logical operations.

01:59:03 4 Q. Very good. And that is cited throughout your report,

01:59:08 5 correct?

01:59:09 6 A. Yes.

01:59:10 7 Q. All right. You were asked some questions on -- let's

01:59:20 8 go over to the validity side of your opinions, right? Your

01:59:25 9 opinions earlier were that the patent -- the '435 patent is

01:59:29 10 valid, and you were asked to render some opinions on that.

01:59:34 11 A. Yes.

01:59:35 12 Q. Mr. Joshi was -- Joshi, pardon me, was asking you

01:59:40 13 questions about the Brett reference?

01:59:43 14 A. Yes.

01:59:44 15 Q. All right. What is described and disclosed in the

01:59:49 16 Brett reference?

01:59:53 17 A. The Brett reference is a patented invention for

02:00:01 18 post-editing of film. So it takes film -- old-style movie

02:00:06 19 film and converts it to digital video. And the patent is a

02:00:15 20 way to -- they call it post-processing editing of the color

02:00:20 21 information and what's translated to digital.

02:00:24 22 Q. So -- was it -- did you refer to it as post-processing

02:00:31 23 yesterday? Yesterday.

02:00:32 24 A. I may have.

02:00:33 25 Q. Yeah. Is there any real time video component to Brett?

02:00:40 1 A. There's no real time digital video component in Brett.

02:00:47 2 Q. Does Brett affect the hue or saturation of any

02:00:51 3 individual color?

02:00:52 4 A. No.

02:00:52 5 Q. We are talking about -- Mr. Joshi was asking you

02:00:58 6 questions about this double patenting. Do you remember

02:01:00 7 that?

02:01:00 8 A. Yes.

02:01:01 9 Q. All right. The patent office had issued the -- Lone

02:01:08 10 Star's '012 patent prior to the '435, right?

02:01:13 11 A. Yes.

02:01:14 12 Q. And they didn't have a problem with ultimately issuing

02:01:18 13 the '435, did they?

02:01:21 14 A. No.

02:01:21 15 Q. Do you think the Patent Office would have issued the

02:01:25 16 '435 patent if the '012 somehow invalidated it?

02:01:30 17 A. No.

02:01:30 18 Q. One last topic here. We talked a little bit about

02:01:37 19 these look-up tables. And you were asked in your report --

02:01:46 20 I think it was 70. My question is, is there anything

02:01:51 21 inconsistent about what you said on the matrix and look-up

02:01:57 22 tables and your position on the validity of the '435

02:02:01 23 patent?

02:02:01 24 A. No.

02:02:06 25 Q. Dr. Ducharme, thank you for your time this afternoon.

02:02:24 1 MR. JOSHI: Mr. Oliver, may I please have  
02:02:27 2 Plaintiff's 29?

02:02:27 3 May I proceed, Your Honor?

02:02:29 4 THE COURT: You may.

02:02:29 5 RECROSS-EXAMINATION

02:02:35 6 BY MR. JOSHI:

02:02:48 7 Q. Dr. Ducharme, Mr. Saba asked you some questions about  
02:02:53 8 this interrogatory response from us. Do you recall?

02:02:55 9 A. Yes.

02:02:56 10 Q. Now, at the top, tell me if it says representative data  
02:03:01 11 or does it say representative products?

02:03:04 12 A. It says representative data for the products identified  
02:03:08 13 on the complaint, and that's what --

02:03:11 14 Q. It says representative data for the products  
02:03:14 15 identified, right?

02:03:15 16 A. Yes.

02:03:15 17 Q. Okay. The first product that's listed, PA27AC, are you  
02:03:24 18 aware that that's a 6-axis product?

02:03:36 19 A. I believe it is. It starts with PA.

02:03:39 20 Q. Okay. And so is the second product, correct?

02:03:41 21 A. I would assume so, yes.

02:03:43 22 Q. And then the third product is a RealTek chip and not a  
02:03:48 23 MediaTek chip, correct?

02:03:49 24 A. That's correct.

02:03:49 25 Q. And you never got the RealTek chip?

02:03:52 1 A. No.

02:03:53 2 Q. I'm sorry. You never got the RealTek source code,

02:03:56 3 correct?

02:03:57 4 A. Yeah, that's correct.

02:03:59 5 Q. Then the next two products are also ProArt or PA,

02:04:07 6 correct?

02:04:07 7 A. Yes.

02:04:07 8 Q. Also 6-axis?

02:04:09 9 A. Yes, that's correct.

02:04:11 10 Q. And then the bottom product is projectors, correct?

02:04:14 11 A. Yes.

02:04:14 12 Q. Okay. So, essentially -- and then the projector is

02:04:21 13 neither 3-axis nor 6-axis, correct?

02:04:25 14 A. You're asking me a question about the projector?

02:04:31 15 Q. Yes.

02:04:32 16 A. I don't -- my understanding was that projectors were no

02:04:35 17 longer at issue.

02:04:36 18 Q. Okay. So the only source code that was requested by

02:04:43 19 Lone Star from MediaTek was for 6-axis products, correct?

02:04:51 20 A. According to this list, yes.

02:04:53 21 Q. And Lone Star went by this list to the best of your

02:04:57 22 knowledge?

02:04:57 23 A. Yes.

02:04:58 24 Q. So Lone Star never requested their source code for a

02:05:01 25 3-axis product from MediaTek, correct?

02:05:04 1 A. I don't -- I wouldn't know that. I see a list.

02:05:16 2 Q. Okay. So, now, you -- you have these scalar model

02:05:22 3 numbers in the medium -- in the middle column. Do you see

02:05:25 4 that?

02:05:25 5 A. Yes.

02:05:26 6 Q. Did you compare those numbers with identifiers on the

02:05:33 7 source code to see if MediaTek produced source code for any

02:05:36 8 of those chips?

02:05:41 9 A. To -- my understanding is that the code isn't from

02:05:51 10 particular chips. It's representative of what's used in

02:05:54 11 their chips.

02:05:56 12 Q. Why do you -- why do you believe that?

02:05:59 13 A. I guess it was an assumption I made as an engineer that

02:06:06 14 these functions would be used in all their different chips.

02:06:11 15 Q. Is it possible that the whole time you were reading the

02:06:15 16 source code, you were reading the source code for a product

02:06:17 17 that's not at issue in this case?

02:06:22 18 A. I wouldn't have -- I would have no reason to believe

02:06:26 19 that that was the case.

02:06:27 20 Q. Okay.

02:06:41 21 MR. JOSHI: Mr. Oliver, may I have -- I believe

02:06:43 22 it's DX-139.

02:07:29 23 BY MR. JOSHI:

02:07:29 24 Q. So, Dr. Ducharme, this is Exhibit DX-139.

02:07:33 25 MR. JOSHI: Could you scroll down, Andrew?

02:07:35 1 BY MR. JOSHI:

02:07:36 2 Q. This is a list of all the ODMs that do manufacturing

02:07:39 3 for ASUS.

02:07:43 4 Have you reviewed this list, Dr. Ducharme?

02:07:49 5 A. I don't recall seeing this before.

02:07:51 6 Q. Do you know if Lone Star asked for technical documents

02:07:55 7 and/or source code from these companies?

02:07:59 8 A. I don't know.

02:08:00 9 Q. Okay. Dr. Ducharme, have you ever testified as an

02:08:06 10 expert for a Defendant in a patent case?

02:08:14 11 A. In court?

02:08:14 12 Q. Yes.

02:08:16 13 A. No.

02:08:16 14 Q. How about in a deposition?

02:08:18 15 A. Yes.

02:08:21 16 Q. Okay. Have you ever been involved in a case in which a

02:08:25 17 patent was invalidated?

02:08:28 18 A. Not to my knowledge. I don't think so. I don't always

02:08:43 19 know the outcome of cases I work on.

02:08:45 20 Q. Okay.

02:08:46 21 A. Sometimes it ends at my deposition, so...

02:08:49 22 Q. Okay.

02:08:50 23 A. I mean --

02:08:51 24 Q. And you know of cases in which patents have been

02:08:57 25 invalidated?

02:08:59 1 A. Yes.

02:09:00 2 Q. Thank you, Dr. Ducharme.

02:09:03 3 MR. SABA: Just very briefly, Your Honor.

02:09:09 4 FURTHER REDIRECT EXAMINATION

02:09:11 5 BY MR. SABA:

02:09:44 6 Q. Dr. Ducharme, when Lone Star requested the source code

02:09:49 7 for the accused products from MediaTek, what did MediaTek

02:09:54 8 give Lone Star subject to that subpoena?

02:10:02 9 MR. JOSHI: He said he doesn't know, Your Honor.

02:10:07 10 THE COURT: Can you rephrase the question?

02:10:11 11 MR. SABA: Sure.

02:10:13 12 BY MR. SABA:

02:10:13 13 Q. When MediaTek was subpoenaed for the information based

02:10:17 14 on ASUS had provided, what did they provide subject to the

02:10:21 15 subpoena?

02:10:22 16 A. The code.

02:10:22 17 MR. JOSHI: Asked and answered. He said he

02:10:24 18 doesn't know.

02:10:25 19 THE COURT: Overruled.

02:10:27 20 BY MR. SABA:

02:10:27 21 Q. I'm sorry?

02:10:28 22 A. They provided a listing of all the code, the hard copy

02:10:37 23 of the code.

02:10:39 24 Q. And what -- what -- generally, what's a subpoena?

02:10:44 25 A. It's a --

02:10:45 1 MR. JOSHI: Objection. He is not an expert on  
02:10:47 2 this kind of stuff.

02:10:48 3 THE COURT: Can you lay a foundation for it?

02:10:51 4 MR. SABA: Sure.

02:10:52 5 BY MR. SABA:

02:10:53 6 Q. You understand that there's legal mechanisms in order  
02:10:55 7 to obtain information from third --

02:10:58 8 A. Yes.

02:10:58 9 Q. And in that regard, would you categorize a subpoena to  
02:11:03 10 that effect?

02:11:04 11 A. Yes.

02:11:04 12 Q. And does that come with, you know, authority that you  
02:11:07 13 got to answer it, or you'll be in violation of a court  
02:11:11 14 order?

02:11:11 15 A. Yes.

02:11:12 16 Q. All right. And what happens if you violate that  
02:11:15 17 subpoena?

02:11:16 18 MR. JOSHI: Objection. Outside the scope of his  
02:11:19 19 expertise.

02:11:20 20 MR. SABA: I'll rephrase the question, Your Honor.

02:11:23 21 BY MR. SABA:

02:11:24 22 Q. Are there ramifications for not complying with a  
02:11:27 23 subpoena?

02:11:28 24 A. Yes.

02:11:28 25 MR. JOSHI: Same objection.

02:11:30 1 THE COURT: Overruled.

02:11:33 2 BY MR. SABA:

02:11:33 3 Q. And so in response to the subpoena, MediaTek produced

02:11:37 4 the source code?

02:11:37 5 A. That's correct.

02:11:38 6 Q. All right. And to be clear, MediaTek knows -- do you

02:11:46 7 believe that MediaTek knows the source code -- which source

02:11:49 8 code is relevant to the ASUS products?

02:11:51 9 A. Yes.

02:11:52 10 Q. Was there any substantial difference among the, I don't

02:11:56 11 know, Mr. Joshi said three chunks of code that was

02:12:00 12 produced?

02:12:01 13 MR. JOSHI: Objection, foundation.

02:12:06 14 THE COURT: Can you lay a foundation?

02:12:08 15 MR. SABA: Yes, Your Honor.

02:12:09 16 BY MR. SABA:

02:12:09 17 Q. In your report, Dr. Ducharme, you discuss the

02:12:12 18 similarities among the functionality of the code. Do you

02:12:14 19 remember that?

02:12:14 20 A. Yes.

02:12:15 21 Q. Was there any substantial similar -- dissimilarities in

02:12:18 22 the code base that you reviewed?

02:12:20 23 A. No.

02:12:21 24 Q. Do you know whether or not ASUS's expert even bothered

02:12:29 25 to review the code?

02:12:31 1 A. I don't believe he did.

02:12:32 2 Q. I want to ask one last question.

02:12:37 3 MR. SABA: Denver, could you please publish  
02:12:41 4 Plaintiff's 29. This is what -- the interrogatory  
02:12:43 5 responses we're talking to -- about just a moment ago. And  
02:12:49 6 if you could go to Page 8, please.

02:12:55 7 BY MR. SABA:

02:12:55 8 Q. Okay. Dr. Ducharme, you see the P -- there are two --  
02:13:09 9 there are two devices -- accused devices or representative  
02:13:12 10 products, whatever you want to call them, on this that  
02:13:16 11 have -- one has a MediaTek chip, and one has a RealTek  
02:13:20 12 semiconductor chip. Do you see that?

02:13:23 13 A. Yes.

02:13:23 14 Q. And one of them is like a PB328Q, and the other is a  
02:13:31 15 PA328Q. Do you see that?

02:13:32 16 A. Yes.

02:13:34 17 Q. All right. In your analysis, is there any  
02:13:37 18 difference -- significant difference in the  
02:13:42 19 color-functionality among the 6-axis devices?

02:13:45 20 A. No.

02:13:45 21 Q. So did it matter whether it was a RealTek chip or a  
02:13:53 22 MediaTek chip?

02:13:53 23 A. It shouldn't matter.

02:13:54 24 Q. Why?

02:13:55 25 A. Well, I mean, this ability to individually select and

02:14:04 1 adjust a color the way a user likes it is a valuable  
02:14:08 2 feature. And you have to assume that whoever makes the  
02:14:15 3 chip that performs that function, the little brain, is  
02:14:19 4 going to have the same result. You move the slider, and  
02:14:23 5 the colors move in a standard way or way you -- you'd  
02:14:28 6 assume that they would move.

02:14:30 7 So I would -- no matter who makes the chip, I  
02:14:33 8 would assume that the function would be the same because  
02:14:35 9 it's what we want. It's what the users -- and what ASUS  
02:14:39 10 would -- sorry -- would require from the vendor of the  
02:14:44 11 chips.

02:14:46 12 Q. Thank you very much for your time this afternoon,  
02:14:50 13 Dr. Ducharme.

02:14:50 14 MR. JOSHI: Just two questions, Your Honor.

02:14:53 15 FURTHER RECROSS-EXAMINATION

02:14:55 16 BY MR. JOSHI:

02:14:56 17 Q. Dr. Ducharme?

02:14:57 18 A. Yes.

02:14:57 19 Q. From time to time, you have referred to these chips as  
02:15:00 20 the brains of the product; is that correct?

02:15:02 21 A. Yes.

02:15:06 22 Q. Okay. Now, you said it makes no difference whether  
02:15:09 23 RealTek makes it or MediaTek makes it or something to that  
02:15:13 24 effect. Do you recall saying that to Mr. Saba right now?

02:15:16 25 A. Yes.

02:15:17 1 Q. Okay.

02:15:19 2 A. And I don't know if those are the exact words I used

02:15:22 3 but --

02:15:22 4 Q. Okay.

02:15:22 5 A. -- close.

02:15:23 6 Q. Because the gist of what I got was because they

02:15:27 7 accomplish the same goal, correct?

02:15:28 8 A. They provide a feature that behaves similarly, yes.

02:15:33 9 Q. Now, whether a chip uses look-up tables or whether

02:15:41 10 you -- it uses some other kind of arithmetic logic, you

02:15:46 11 wouldn't know that until you look at the source code,

02:15:50 12 correct?

02:15:53 13 A. That's correct.

02:15:54 14 Q. Okay. And you looked at least one instance, namely the

02:16:06 15 double-patenting case, whether -- where a look-up table

02:16:09 16 versus arithmetic logic made a difference, correct?

02:16:15 17 A. I'm sorry. Can you ask the question again? I'm

02:16:18 18 just --

02:16:20 19 Q. In -- in your opinions on double patenting, you

02:16:23 20 differentiated between two patents based on one using a

02:16:29 21 look-up table and one using arithmetic logic, correct?

02:16:33 22 A. That was not the only difference.

02:16:35 23 Q. I agree. Okay. But whether I agree or don't agree

02:16:41 24 doesn't matter for this conversation.

02:16:43 25 What matters is you differentiated between two

02:16:47 1 patents based on look-up table.

02:16:55 2 A. Yes.

02:16:55 3 Q. Okay. And the RealTek chip and the MediaTek chip may  
02:17:00 4 serve the same ASUS product, but one may do a look-up table  
02:17:04 5 and one may do a different form of logic, correct?

02:17:09 6 A. It's possible.

02:17:10 7 Q. Okay. So just because they meet the same purpose in  
02:17:16 8 the end doesn't mean they do it the same way, correct?

02:17:19 9 A. Correct.

02:17:20 10 Q. And if -- and by doing things differently, one could  
02:17:23 11 infringe and one could not infringe, correct?

02:17:28 12 A. Correct.

02:17:29 13 Q. Okay. Thank you, Dr. Ducharme.

02:17:33 14 MR. SABA: Nothing further, Your Honor.

02:17:36 15 THE COURT: Okay. You may step down.

02:17:44 16 Ladies and gentlemen of the jury, I want to give  
02:17:46 17 you a couple of instructions about Dr. Ducharme's  
02:17:49 18 testimony, and then we're going to take a short break  
02:17:55 19 because the attorneys and I have some matters we need to  
02:17:58 20 discuss before the next witness testifies.

02:18:03 21 With respect to Dr. Ducharme's testimony, ASUS's  
02:18:07 22 counsel asked Dr. Ducharme to read from the Court's claim  
02:18:13 23 construction order. That was improper. And you are  
02:18:17 24 instructed to ignore the testimony provided by Dr. Ducharme  
02:18:22 25 that quoted from the Court's claim construction order.

02:18:27 1 You also heard an exchange with the witness where  
02:18:31 2 an accused product was compared to what is known in patent  
02:18:35 3 law as a preferred embodiment. And the Court is  
02:18:40 4 instructing you and I will instruct you further at the  
02:18:44 5 close of the evidence that for purposes of finding  
02:18:49 6 infringement, the claim limitations are not restricted by  
02:18:53 7 or limited to the preferred embodiment.

02:18:59 8 So with those instructions, we are going to take a  
02:19:04 9 recess now hopefully of about 15 minutes.

02:19:09 10 COURT SECURITY OFFICER: All rise for the jury.

02:19:12 11 (Jury out.)

02:19:45 12 THE COURT: Okay. Please be seated.

02:19:48 13 Mr. Oliver, you reminded me before we began this  
02:19:52 14 afternoon's session that ASUS had filed some objections to  
02:19:56 15 the demonstratives or the slides to be used with the next  
02:20:00 16 witness.

02:20:01 17 I've taken a look at those, and I have numbered  
02:20:04 18 them in a way that corresponds with essentially the way you  
02:20:10 19 set them out in your -- in your -- in your filing.

02:20:19 20 I've also had a opportunity to review the  
02:20:22 21 Plaintiff's response to that.

02:20:23 22 I will be happy to hear anything you wish to say,  
02:20:27 23 Mr. Oliver, and I'll be glad to hear anything Lone Star  
02:20:31 24 wishes to say about that -- about this issue. There are --  
02:20:36 25 I'll tell you, there are only three that I think are

02:20:41 1 essentially not waived and that do concern me. And I'd  
02:20:46 2 like to hear whatever you want to say about that, as well  
02:20:48 3 as any response.

02:20:49 4 And they are as follows: No. 2 -- again,  
02:20:53 5 according to your numbering -- which relates to an  
02:20:58 6 objection or a concern about some request for post-trial  
02:21:01 7 damages when the parties had agreed that the case would be  
02:21:07 8 through damages through trial. That's your No. 2.

02:21:10 9 No. 6, which is an objection to an increase in the  
02:21:17 10 damages sought by the Plaintiff with respect to the  
02:21:28 11 difference, I gather, between March 17th and May 17 and --  
02:21:33 12 which resulted apparently in an increase of \$1.58 million  
02:21:40 13 to \$1.72 million.

02:21:43 14 And then what you, I think, numbered 10, which is  
02:21:46 15 a demonstrative or a slide that relates to licenses that  
02:21:50 16 are labeled as having not been produced.

02:21:53 17 So, again, you're welcome to make whatever  
02:21:57 18 argument you wish to make about these, but those are the  
02:22:03 19 three that I find concerning.

02:22:07 20 MR. OLIVER: Your Honor, with -- are you able to  
02:22:17 21 hear me?

02:22:18 22 THE COURT: I can hear you, yes.

02:22:19 23 MR. OLIVER: Okay. I wasn't sure whether the  
02:22:22 24 microphone was picking me up.

02:22:24 25 With respect to the waiver issue that was raised

02:22:27 1 by Plaintiff, I believe the waiver argument was that these  
02:22:31 2 should have been raised in a motion. I'm looking at  
02:22:34 3 Federal Rule of Evidence 103(e) on observing claims of  
02:22:40 4 error, and I don't want to quibble too much, but just want  
02:22:44 5 to note that in 103(a)(1)(a), it provides two different  
02:22:52 6 opportunities to raise a claim of error. One is an  
02:22:54 7 objection, and one is a motion, two different types of  
02:22:57 8 things. The Court's scheduling order dealt with motions.  
02:23:04 9 This is an objection.

02:23:05 10 Second --

02:23:05 11 THE COURT: How is this different from a motion to  
02:23:07 12 strike or a Daubert motion or something like that? Because  
02:23:12 13 most of these feel like Daubert motions to me.

02:23:16 14 MR. OLIVER: Most of them are not Daubert motions  
02:23:20 15 because most of them are based on relevance and things  
02:23:29 16 being more prejudicial than probative of any value. So  
02:23:32 17 they're not based upon the scientific methodology, they're  
02:23:37 18 based on whether they're relevant to the question presented  
02:23:38 19 to the jury and whether they're more prejudicial than  
02:23:41 20 probative.

02:23:41 21 THE COURT: Right.

02:23:42 22 MR. OLIVER: So that's why I believe -- I just  
02:23:44 23 wanted to make sure that statement was clear on the record  
02:23:47 24 in response to the arguments about waiver. And the rules  
02:23:52 25 do clearly denote two different things -- two different,

02:23:56 1 you know, objections or motions.

02:23:58 2 So I don't believe that the order that was --  
02:24:02 3 scheduling order that was restricted just to motions  
02:24:05 4 applies to objections.

02:24:07 5 THE COURT: So as I understand what you're  
02:24:10 6 objecting to now, it's not the testimony, it's the  
02:24:12 7 demonstrative; is that correct?

02:24:14 8 MR. OLIVER: It is. And then we'll make similar  
02:24:16 9 objections to the testimony that it tried to shoehorn in  
02:24:21 10 the -- the evidence that's also not relevant and more  
02:24:26 11 prejudicial than probative.

02:24:28 12 Sorry. Did I interrupt Your Honor?

02:24:30 13 THE COURT: No. You answered my question. I  
02:24:32 14 mean, I guess my point is you wouldn't have filed this  
02:24:35 15 brief if you hadn't been provided with a copy of the  
02:24:38 16 demonstrative.

02:24:39 17 So really all we're talking about now is the  
02:24:41 18 demonstratives. You can make whatever objections during  
02:24:45 19 the testimony you think are appropriate.

02:24:47 20 MR. OLIVER: Okay. Thank you.

02:24:48 21 On -- moving on to the three that Your Honor has  
02:24:57 22 said you did not consider waived and wanted to consider,  
02:25:04 23 this morning for the first time, while we were meeting and  
02:25:09 24 conferring about the jury verdict form, Plaintiff said they  
02:25:13 25 wanted to revise it to claim post-trial damages in, you

02:25:19 1 know, essentially a lump-sum damages amount that covers a  
02:25:23 2 post-trial period.

02:25:24 3 And so this is the first time we've heard of that  
02:25:27 4 request. We've already put on exhibits that have testified  
02:25:33 5 and left. Mr. Rice has testified and left. Dr. Ducharme  
02:25:37 6 has testified and left. And it's -- it's too late.

02:25:42 7 THE COURT: Is it disclosed in an expert report?  
02:25:46 8 It was?

02:25:46 9 MR. OLIVER: The number was disclosed, but when  
02:25:55 10 the Plaintiff put in its pre-trial papers, including the  
02:25:57 11 jury verdict form, they asked for damages up to trial. So  
02:26:01 12 if there's an amount after trial, that's something that  
02:26:04 13 should be --

02:26:04 14 THE COURT: Well, I think in openings they said  
02:26:07 15 they were asking for \$2.8 million, right? Did that number  
02:26:11 16 not include post-trial damages?

02:26:12 17 MR. OLIVER: That number includes what their  
02:26:14 18 expert put in the post-trial damages, but we didn't know at  
02:26:16 19 the time that --

02:26:17 20 THE COURT: Overruled. Move on to your next one.

02:26:22 21 MR. OLIVER: Okay. So on No. 6, Mr. Rice -- the  
02:26:30 22 point I wanted to make here is the revised calculations  
02:26:34 23 were received again after trial had started, and these are  
02:26:39 24 not based on information that came from ASUS late or like a  
02:26:46 25 revised spreadsheet of sales. This is just his projection

02:26:51 1 based on the data that he has had for more than seven  
02:26:57 2 months.

02:26:57 3 THE COURT: So I want to ask you very clearly.

02:27:00 4 Was the first time you learned of this number on Monday?

02:27:05 5 MR. OLIVER: Yes.

02:27:06 6 THE COURT: Okay. And how did you learn it?

02:27:09 7 MR. OLIVER: It -- well, I believe we learned of  
02:27:12 8 it through the -- the documents that we're objecting to --  
02:27:17 9 the demonstratives that we're objecting to.

02:27:19 10 THE COURT: When that was first provided to you?

02:27:22 11 MR. OLIVER: Right. In connection with the  
02:27:23 12 Court's deadlines for providing demonstratives in advance  
02:27:27 13 of testimony.

02:27:27 14 THE COURT: Okay. And was a supplemental report  
02:27:30 15 provided to you?

02:27:30 16 MR. OLIVER: I don't believe so. No, Your Honor.

02:27:33 17 THE COURT: Okay. All right.

02:27:34 18 MR. OLIVER: And then the final point, I believe  
02:27:40 19 our issue on No. 10 is -- is adequately briefed. The fact  
02:27:44 20 that something was not produced and that the witness found  
02:27:47 21 some listing somewhere that they believe is probative is --  
02:27:51 22 is not relevant here. He hasn't analyzed the licenses.

02:27:55 23 THE COURT: Could I -- do you have a copy of this  
02:27:58 24 slide? Could you put the slide on the Elmo maybe?

02:28:08 25 MR. BENNETT: Your Honor, if it's easier, our

02:28:10 1 technical guy can put it up.

02:28:13 2 THE COURT: That will be helpful. Yes, please.

02:28:19 3 MR. OLIVER: 11. At the top, it says: ASUS

02:28:24 4 Licenses.

02:28:46 5 THE COURT: Okay. I don't need to hear any more  
02:28:49 6 argument on this. I'll hear from the Plaintiff.

02:28:58 7 MR. LEE: Your Honor, regarding Point No. 6, the  
02:29:03 8 damages, although there was -- adjusted because the table  
02:29:07 9 had an incorrect date of March 15th, the overall trial  
02:29:12 10 number is still \$2.8 million that's being sought. There's  
02:29:15 11 no change in the ask amount by Plaintiff.

02:29:18 12 THE COURT: But the -- the number increased from  
02:29:22 13 \$1.58 million to \$1.72 million, correct?

02:29:28 14 MR. LEE: That's correct, because the --  
02:29:30 15 Mr. Perdue's determination of the one-time royalty payment  
02:29:34 16 of \$2.8 million looks at it from the period of filing of  
02:29:40 17 the complaint through the patent expiration. So the  
02:29:46 18 overall sales numbers and data that he's using, it's the  
02:29:49 19 same data number but it's just --

02:29:50 20 THE COURT: So wait a minute. Maybe I'm  
02:29:53 21 misunderstanding. What you're saying is because the trial  
02:29:56 22 date moved from March 17th to May 17th, that these damages  
02:30:01 23 changed from being pre-trial to post-trial or post-trial to  
02:30:06 24 pre-trial?

02:30:07 25 MR. LEE: That's how he split it up in his

02:30:11 1 calculations just to look at what the damages would be for  
02:30:13 2 the payment.

02:30:13 3 THE COURT: Okay. And so why did we wait until  
02:30:15 4 Monday to disclose that number?

02:30:18 5 MR. LEE: We just noticed it and corrected it when  
02:30:21 6 we were going through the slides -- when we were putting up  
02:30:22 7 the --

02:30:22 8 THE COURT: Yeah, but the trial -- the trial date  
02:30:25 9 was moved a long time ago.

02:30:27 10 MR. LEE: We just noticed it on the report,  
02:30:30 11 Your Honor, but the overall damages number that Mr. Perdue  
02:30:36 12 assesses, it's through the end of the trial -- through the  
02:30:39 13 end of patent expiration.

02:30:42 14 THE COURT: All right. You've convinced me on  
02:30:43 15 that.

02:30:43 16 Mr. Oliver, I'm going to overrule your objection  
02:30:46 17 on that. I think there was -- there should not be any  
02:30:48 18 surprise about it. It's just a question of where it lies  
02:30:51 19 on the timeline. The number -- the overall number  
02:30:53 20 shouldn't -- should not have been a surprise to you.

02:30:57 21 MR. LEE: Regarding Point No. 10, that's the only  
02:31:01 22 objection to slides that were made. We won't use it.

02:31:03 23 THE COURT: Yeah, I think that slide is not  
02:31:05 24 appropriate. Okay.

02:31:06 25 All right. Let's -- it's 2:30. To avoid having

02:31:13 1 another break, let's take a short break right now, and  
02:31:17 2 we'll resume.

02:31:17 3 MR. OLIVER: Did Your Honor rule on the --

02:31:19 4 COURT SECURITY OFFICER: All rise.

02:31:20 5 THE COURT: Yes, I did. I overruled your  
02:31:23 6 objection.

02:31:25 7 (Recess.)

02:47:32 8 (Jury in.)

02:47:32 9 COURT SECURITY OFFICER: All rise.

02:47:35 10 THE COURT: Please be seated. All right.

02:47:37 11 Plaintiffs may call its next witness.

02:47:40 12 MR. BENNETT: Your Honor, Plaintiffs call Glenn  
02:47:46 13 Perdue.

02:47:46 14 THE COURT: Mr. Perdue, if you would raise your  
02:47:48 15 right hand to be sworn, please.

02:47:51 16 (Witness sworn.)

02:48:02 17 THE COURT: You may be seated.

02:48:20 18 GLENN PERDUE, PLAINTIFF'S WITNESS, SWORN

02:48:23 19 DIRECT EXAMINATION

02:48:23 20 BY MR. LEE:

02:48:25 21 Q. Good afternoon, Mr. Perdue. How are you today?

02:48:27 22 A. Good.

02:48:27 23 Q. Why are you here today?

02:48:29 24 A. To testify as to damages in this patent infringement  
02:48:32 25 case.

02:48:32 1 Q. Can you tell us a little bit about your background in  
02:48:36 2 terms of your educational history?

02:48:39 3 A. Sure. I do know where I went to school. I didn't need  
02:48:49 4 the screen for that, but it is helpful. Yeah. So I  
02:48:53 5 attended -- I started out in engineering school. I  
02:49:00 6 finished up with a degree in business at Middle Tennessee  
02:49:04 7 State University, just outside of Nashville. And then I  
02:49:09 8 did my MBA at Vanderbilt in Nashville.

02:49:15 9 Q. And what's the focus of your bachelor's degree?

02:49:17 10 A. Concentration in finance.

02:49:18 11 Q. What about your MBA degree, what was the focus on that?

02:49:20 12 A. It was a general MBA.

02:49:22 13 Q. What did you do after you graduated from Vanderbilt?

02:49:26 14 A. I continued doing consulting work. I had started a  
02:49:29 15 technology company with a partner earlier in my career, in  
02:49:33 16 between MTSU and Vanderbilt, and I continued doing  
02:49:37 17 technology-related consulting work.

02:49:39 18 Q. At the technology company that you started with your  
02:49:42 19 partner, what type of business was that in?

02:49:45 20 A. A software development company.

02:49:47 21 Q. And what sort of experience did you gain while working  
02:49:58 22 at that technology company?

02:49:58 23 A. Well, we built accounting systems for businesses, so I  
02:49:58 24 tell people that was my first MBA was starting and running  
02:49:58 25 your own business.

02:50:08 1 THE COURT: Mr. Lee, could I ask you to speak up,  
02:50:11 2 and let me ask the witness to speak up, as well, please.  
02:50:15 3 THE WITNESS: Yes, Your Honor.  
02:50:16 4 MR. LEE: Yes, Your Honor.  
02:50:18 5 BY MR. LEE:  
02:50:23 6 Q. Did you have experience with licensing at this  
02:50:25 7 technology company?  
02:50:25 8 A. I did.  
02:50:26 9 Q. What sort of licensing experience did you acquire?  
02:50:30 10 A. We licensed our products out to people that were using  
02:50:32 11 our products, and we in-licensed technology from companies  
02:50:36 12 where we were using their software.  
02:50:38 13 Q. Now, why did you license in technology from other  
02:50:41 14 companies?  
02:50:42 15 A. Well, we needed that technology, and to be able to gain  
02:50:44 16 access to it legally, we had to license it from them.  
02:50:47 17 Q. And what about licensing out your technology, why did  
02:50:49 18 you do that?  
02:50:50 19 A. That was the way we sold and conveyed our products, and  
02:50:54 20 that's the way those transactions are.  
02:50:56 21 Q. And how long were you at this technology company?  
02:50:58 22 A. About six years.  
02:51:00 23 Q. What did you do after that?  
02:51:01 24 A. So after that -- so I sold my interest in that company,  
02:51:05 25 and that's when I went to Vanderbilt to do the MBA, and

02:51:09 1 then I continued doing consulting for technology-related  
02:51:12 2 companies.

02:51:13 3 Q. And I see that you have listed as your work experience  
02:51:17 4 two companies on this slide. Can you explain to us a  
02:51:20 5 little bit about both?

02:51:21 6 A. Sure. So Crowe Chizek & Company was a top 10 -- is a  
02:51:31 7 top 10 accounting and consulting firm. That's why I was  
02:51:33 8 there for about four years. Before that, I was with a  
02:51:36 9 company called LECG. That's where I started doing the type  
02:51:41 10 of work that I do now. And then after that, it was Kraft  
02:51:48 11 Analytics where I started the subsidiary of Kraft CPAs in  
02:51:50 12 Nashville, which is a large local accounting and consulting  
02:51:52 13 firm.

02:51:54 14 Q. This next slide, some of your representative clients,  
02:52:00 15 can you walk us through some of the -- why you prepared a  
02:52:07 16 slide?

02:52:08 17 A. Sure. Well, the -- on the left, the corporate clients,  
02:52:09 18 those are some -- some known corporations, some known  
02:52:11 19 names, DuPont, Pfizer, Nissan, Xerox, so some large  
02:52:24 20 corporations that people would be familiar with.

02:52:24 21 Q. And what type of work did you do for these clients?

02:52:28 22 A. Work that I was doing for these clients and still do  
02:52:31 23 for some of these clients is generally related to damages.

02:52:32 24 Q. And you've also listed musical acts. Why did you  
02:52:36 25 include this on your slide?

02:52:37 1 A. Well, it's a lot less boring than the stuff on the  
02:52:41 2 left-hand side of the slide, first of all, but being in  
02:52:43 3 Nashville, we do a lot of work with intellectual property  
02:52:49 4 related to musical acts.

02:52:50 5 And there's a couple of famous Texans on that  
02:52:54 6 slide, too.

02:52:54 7 MR. LEE: Slide No. 2.

02:52:57 8 BY MR. LEE:

02:52:58 9 Q. What type of credentials do you have in terms of  
02:53:01 10 certifications?

02:53:02 11 THE COURT: Mr. Lee, I hate to fuss at you --

02:53:02 12 MR. LEE: Okay.

02:53:05 13 THE COURT: -- but I'm struggling myself, and I  
02:53:07 14 think the witness needs to speak up.

02:53:10 15 BY MR. LEE:

02:53:10 16 Q. What type of certifications do you have?

02:53:12 17 A. So the first one is a CVA, which stands for Certified  
02:53:19 18 Valuation Analyst.

02:53:20 19 Q. And what type of skills do you acquire being certified  
02:53:24 20 as a CVA?

02:53:26 21 A. So that's primarily related to business and intangible  
02:53:28 22 asset valuation work.

02:53:29 23 Q. The MAFF, what qualifications do you acquire for that?

02:53:38 24 A. So that's more of a -- that's a Master Analyst in  
02:53:40 25 Financial Forensics, and that's kind of what we're here --

02:53:41 1 that's what I'm doing here today. This is financial  
02:53:43 2 forensics. It's financial analysis to assist the Court.  
02:53:49 3 So that was mostly about damage calculations.  
02:53:53 4 Q. Do you have any other certifications, sir?  
02:53:57 5 A. Yes. So the one at the bottom there, that's Certified  
02:54:00 6 Licensing Professional, and that deals directly with the  
02:54:02 7 issue of intellectual property licensing.  
02:54:05 8 Q. You have listed some papers there. Can you explain why  
02:54:10 9 those are there?  
02:54:11 10 A. Yes. So these are the last three peer-reviewed papers  
02:54:17 11 that were published that I authored. And they deal with  
02:54:22 12 intellectual property issues. And I've had about six or  
02:54:26 13 seven peer-reviewed papers, and I've written about 25, I  
02:54:31 14 think, overall that have been published.  
02:54:33 15 Q. What about presentations, have you provided any related  
02:54:38 16 to damages?  
02:54:38 17 A. I do. I present on valuation and damages regularly for  
02:54:43 18 State Bar associations, for industry groups. I've  
02:54:52 19 presented for LES, the Association of University Technology  
02:54:54 20 Managers, and other groups. And I actually present at  
02:54:57 21 Vanderbilt, too, at the law school and other places.  
02:55:00 22 Q. How long have you been serving as an expert on patent  
02:55:04 23 damages?  
02:55:05 24 A. So my first case was with LECG, and that was about  
02:55:10 25 18 years ago, I believe. That was my first patent

02:55:13 1 infringement case that I was retained on and wrote a report  
02:55:16 2 for.

02:55:19 3 Q. How many back patent damages cases have you worked on?

02:55:24 4 A. Probably about 20. Obviously, a lot of those settle  
02:55:28 5 and don't see the light of day, but it's probably about 20  
02:55:32 6 patent infringement cases.

02:55:33 7 MR. LEE: Your Honor, Plaintiff moves for  
02:55:35 8 Mr. Perdue to be tendered as an expert in damages.

02:55:38 9 THE COURT: Any objection?

02:55:39 10 MR. OLIVER: No objection.

02:55:41 11 THE COURT: Very well.

02:55:43 12 BY MR. LEE:

02:55:46 13 Q. Mr. Perdue, what was your homework assignment for this  
02:55:51 14 case?

02:55:53 15 A. Well, to read -- you mean for -- oh, for this case  
02:55:57 16 overall?

02:56:03 17 Q. Yes, this case overall.

02:56:05 18 A. Yeah. Well, it was to come up with a report that  
02:56:13 19 addressed the damages using the -- based on reasonable  
02:56:15 20 royalties.

02:56:15 21 Q. And what type of information did you review in  
02:56:20 22 evaluating the damages?

02:56:21 23 A. Well, so on this slide, it's in three -- three big  
02:56:23 24 buckets. There was Lone Star information that I reviewed,  
02:56:26 25 which is -- was primarily the licensing agreement,

02:56:28 1 obviously the patent, and then there were some other  
02:56:31 2 miscellaneous documents.

02:56:32 3 Q. What about Defendant, what sort of information did you  
02:56:38 4 review on them?

02:56:39 5 A. Well, at the top of that list is the financial  
02:56:42 6 information. I was dependent upon the financial  
02:56:45 7 information that the Defendant provided to be able to do my  
02:56:48 8 calculations of damages in terms of sales.

02:56:51 9 And then there were some license agreements, I  
02:56:54 10 reviewed their website, looked at some discovery responses,  
02:56:57 11 and there were some other miscellaneous information.

02:57:00 12 Q. You know, besides Defendant's information, what other  
02:57:04 13 information did you review?

02:57:05 14 A. So the Defendant's expert, Mr. Reed, published a  
02:57:10 15 report, submitted a report in this case. I reviewed that.  
02:57:14 16 I had a discussion with Dr. Ducharme that we just heard  
02:57:17 17 from a moment ago. I looked at industry articles and  
02:57:20 18 license agreements, industry license agreements, and then I  
02:57:24 19 reviewed some of the trial testimony.

02:57:31 20 Q. What's your opinion on the damages for this case that's  
02:57:38 21 owed to Lone Star by ASUS?

02:57:40 22 A. The lump sum amount for the entire period that was  
02:57:43 23 considered is \$2.8 million.

02:57:45 24 Q. Is \$2.8 million a reasonable amount in your opinion?  
02:57:49 25 A. It is.

02:57:49 1 Q. And why is that?

02:57:50 2 A. Well, if you can -- you look over to the right there,  
02:57:55 3 this is the -- kind of the first indicator. There's a lot  
02:57:57 4 of indicators of reasonableness here, but the very first  
02:58:00 5 one is --

02:58:00 6 MR. OLIVER: Objection. Your Honor, I believe the  
02:58:05 7 witness is about to testify about a large number, and we  
02:58:08 8 object to that testimony on the basis of relevance and more  
02:58:16 9 prejudicial than probative.

02:58:19 10 MR. LEE: Your Honor, that's a number that's used  
02:58:21 11 by Mr. Perdue. It's disclosed in his expert report. It  
02:58:24 12 forms the damages base where he uses to go and calculate  
02:58:28 13 the damage -- the ending damages amount of \$2.8 million.

02:58:34 14 MR. OLIVER: And this type of number, this large  
02:58:36 15 number has been explicitly rejected by the Federal Circuit,  
02:58:40 16 Your Honor, the use of it.

02:58:41 17 THE COURT: What do you mean?

02:58:43 18 MR. OLIVER: The Federal Circuit has said you  
02:58:45 19 cannot -- you have to apportion, and the apportionment  
02:58:48 20 number, and showing that -- the small slice out of a large  
02:58:48 21 number is not the -- (indecipherable) -- that was cited in  
02:58:51 22 their motion.

02:58:51 23 THE COURT: Did you file a Daubert motion on this?

02:58:54 24 MR. OLIVER: No, Your Honor. I'm making an  
02:58:56 25 objection.

02:58:57 1 THE COURT: Overruled.

02:58:59 2 BY MR. LEE:

02:59:00 3 Q. Please continue, Mr. Perdue.

02:59:02 4 Can you explain to us why the royalty payment of  
02:59:05 5 \$2.8 million is reasonable?

02:59:07 6 A. Yeah. So, again, this is kind of just one of the first  
02:59:10 7 indicators of reasonableness here.

02:59:12 8 You can see that that \$2.8 million number, if you  
02:59:16 9 divide it by the \$882 million in revenue that it was  
02:59:22 10 derived from represents a fraction of 1 percent,  
02:59:25 11 three-tenths of 1 percent of those revenues, and that's  
02:59:30 12 the -- what we call the effective royalty rate.

02:59:38 13 Q. Mr. Perdue, you prepared a slide.

03:00:02 14 Can you explain to us -- can you explain to us why  
03:00:07 15 did you -- why did you prepare this slide?

03:00:08 16 A. Sure. This is a slide that I have used for years in  
03:00:13 17 valuation presentations when I'm teaching, and it gets to  
03:00:19 18 the heart of the idea of how we use market-based  
03:00:24 19 information in valuation or in damages settings, and it's  
03:00:27 20 the idea of comparable houses.

03:00:29 21 And if you're trying to figure out what you should  
03:00:32 22 offer, for instance, for the yellow house, the third one  
03:00:36 23 from the left with the question mark above it, and you know  
03:00:39 24 that those houses around it sold for between 1.1 and  
03:00:44 25 \$1.3 million, that would inform you as to what might be a

03:00:49 1 reasonable offer on the yellow house that you're looking  
03:00:52 2 at.

03:00:54 3 That represents a purchase price, if you transact  
03:01:00 4 at that amount, these 1.1 to \$1.3 million. Those represent  
03:01:07 5 purchase prices. That's a price to own.

03:01:10 6 There's also a price to use. For a house, it's a  
03:01:13 7 rental rate. What we're talking about here is more like  
03:01:20 8 that. It's more of a rental rate. It's more of a price to  
03:01:24 9 use, and that's what a royalty rate is. It's a price to  
03:01:27 10 use someone else's information technology.

03:01:29 11 Q. Now, in the context of a hypothetical negotiation, what  
03:01:36 12 would be the royalty -- relevant data or metrics that one  
03:01:41 13 would want to look at for that licensing arrangement?

03:01:45 14 A. Yeah. So if you're looking at a house, you get on  
03:01:47 15 Zillow, you look for comparable houses in neighborhood that  
03:01:50 16 you're interested in.

03:01:51 17 With this, you try to find the most comparable or  
03:01:55 18 analogous licenses you can to the technology in question to  
03:01:58 19 help you understand what royalty rates for the technology  
03:02:01 20 at issue would be.

03:02:02 21 Q. And how did you determine the damages amount in this  
03:02:14 22 case?

03:02:14 23 A. Based on a reasonable royalty.

03:02:17 24 MR. LEE: Denver, Slide 6.

03:02:20 25 BY MR. LEE:

03:02:22 1 Q. Mr. Perdue, can you explain this slide for us?

03:02:25 2 A. Sure. This is the idea of a hypothetical negotiation.

03:02:28 3 So I don't know how much you've heard about the

03:02:31 4 Georgia-Pacific factors or the Georgia-Pacific case, but it

03:02:34 5 basically sets forth 15 factors that should be considered

03:02:45 6 when you're trying to go through that assessment that I

03:02:46 7 talked about earlier, trying to find a reasonable royalty

03:02:51 8 rate that's applicable to the patent-in-suit and the

03:02:56 9 infringement action, and it's based upon some of these

03:02:59 10 ideas here.

03:03:00 11 Q. And what are some of the assumptions that are assumed

03:03:04 12 in those negotiations?

03:03:07 13 A. Well, the first assumption is you assume -- and this is

03:03:10 14 always the case with the damages expert. In this case, you

03:03:13 15 assume that the patent is valid, it's enforceable, and it's

03:03:18 16 infringed, or it would be infringed if you got to the point

03:03:22 17 of use.

03:03:22 18 So that basically says you're assuming that it's

03:03:27 19 a -- that it's a good patent and that it's valid. That's

03:03:31 20 the first assumption.

03:03:32 21 And then this next bullet point and the last one

03:03:35 22 are kind of similar. This idea of this willingness to

03:03:39 23 negotiate and the ideas that the parties have got to come

03:03:43 24 up with a deal.

03:03:45 25 In the real world, people can walk away from the

03:03:50 1 negotiating table, but in the context of this hypothetical  
03:03:53 2 negotiation, we assume that they reach agreement. They  
03:03:55 3 stayed there, and they reach agreement. So that's one of  
03:04:02 4 the things.

03:04:02 5 And we assume that they are there voluntarily. So  
03:04:06 6 unlike this setting, where you're in a court setting and  
03:04:09 7 you're compelled to be here, this is assumed to be  
03:04:12 8 voluntary.

03:04:13 9 Think back to the idea of the house. If some of  
03:04:16 10 those house price were really, really high or really,  
03:04:19 11 really low and then you learned that it was because someone  
03:04:22 12 was forced to sell the house or forced to buy the house,  
03:04:26 13 then the evidence wouldn't be that good. So what we want  
03:04:31 14 here is market-based evidence, arm's-length transaction, no  
03:04:37 15 compulsion.

03:04:38 16 Q. In this hypothetical negotiation, can the parties walk  
03:04:43 17 away from the table and not reach a deal?

03:04:46 18 A. No, they've got to come up with a deal.

03:04:48 19 Q. What is the hypothetical negotiation date for this  
03:04:52 20 case?

03:04:52 21 A. 2013 is when it starts.

03:04:55 22 Q. And who are the parties doing the negotiation?

03:04:58 23 A. It's Lone Star and ASUS.

03:05:02 24 Q. Why would ASUS want to negotiate with Lone Star?

03:05:07 25 A. Because under the construct of this hypothetical

03:05:10 1 negotiation, it's about to start using what's taught in the  
03:05:16 2 '435 patent.

03:05:22 3 Q. What is the duration of this licensing arrangement?

03:05:28 4 A. Well, there's -- there's two buckets that -- I mean, it  
03:05:35 5 can go no further than the expiration of the patent,  
03:05:41 6 obviously.

03:05:41 7 Q. And what type of license would these two parties be  
03:05:46 8 negotiating between?

03:05:48 9 A. Typically it would be a lump sum.

03:05:52 10 Q. And what is Lone Star's licensing policy?

03:05:55 11 A. Well, thus far, it's two primary things that I have  
03:05:57 12 observed from the deals that they've done in the past.  
03:06:00 13 They're non-exclusive licenses, and they tend to be  
03:06:05 14 lump-sum payments.

03:06:06 15 Q. What are the advantages of Lone Star's '435 patent?

03:06:11 16 A. That's more for the technical expert, I think, in terms  
03:06:18 17 of the technical advantages.

03:06:22 18 Q. But they are there to negotiate the '435 patent?

03:06:27 19 A. Yes. Both parties are there and -- yeah, presumably  
03:06:32 20 there's benefits in the patent.

03:06:51 21 Q. If I could turn your attention to -- there's a binder  
03:06:58 22 next to you, Mr. Perdue. I believe it's the second  
03:07:01 23 volume -- first volume, P-34. If you could take your time  
03:07:07 24 and take a look at that?

03:07:09 25 A. P-34?

03:07:10 1 Q. Yes, sir.

03:07:12 2 A. Okay.

03:07:26 3 Q. Have you seen this document before?

03:07:28 4 A. I have.

03:07:28 5 Q. What is this document?

03:07:29 6 A. This is a patent license and settlement agreement

03:07:34 7 between Lone Star and Sharp Electronics.

03:07:36 8 Q. Now, earlier you testified you reviewed Lone Star's

03:07:39 9 licenses; is that correct?

03:07:40 10 A. Yes.

03:07:41 11 Q. Is this one of the licenses?

03:07:42 12 A. Yes.

03:07:49 13 MR. LEE: Denver, can you blow up the first

03:07:56 14 paragraph.

03:07:57 15 BY MR. LEE:

03:08:01 16 Q. Who is this license agreement with?

03:08:03 17 A. Sharp Electronics.

03:08:10 18 Q. And who is Sharp Electronics?

03:08:13 19 A. Sharp Electronics, it says, is a Japanese

03:08:16 20 corporation -- well, Sharp Electronics is the

03:08:20 21 U.S. subsidiary, and Sharp Corporation is the Japanese

03:08:30 22 parent, it looks like.

03:08:30 23 Q. What type of licensing agreement is this?

03:08:32 24 A. A patent license and settlement agreement.

03:08:34 25 Q. Is this a voluntary agreement for the purposes of a

03:08:38 1 hypothetical negotiation?

03:08:38 2 A. No. This is one of those situations that we talked  
03:08:40 3 about a moment ago where there's compulsion. These parties  
03:08:46 4 were compelled to come up with this agreement due to  
03:08:49 5 litigation or the threat of litigation.

03:08:51 6 Q. If I could turn your attention back to the first page  
03:08:53 7 without the blowup. Okay. It's the third paragraph from  
03:09:03 8 the recitals.

03:09:05 9 A. Yes.

03:09:11 10 MR. LEE: If that could be blown up. Sorry, the  
03:09:14 11 paragraph before that.

03:09:16 12 BY MR. LEE:

03:09:20 13 Q. Can you take a moment to read this paragraph to  
03:09:23 14 yourself?

03:09:37 15 A. Okay.

03:09:38 16 Q. What is this paragraph, in a nutshell, telling us?

03:09:50 17 A. This tells us that Sharp has said that it's basically  
03:09:54 18 going to exit the market.

03:09:58 19 Q. And, in fact, doesn't it state that Defendant  
03:10:03 20 represented that it discontinued selling or manufacturing  
03:10:07 21 certain accused products in the United States?

03:10:10 22 A. Yes.

03:10:10 23 Q. Does that mean at the time this agreement was signed,  
03:10:16 24 Sharp no longer was in the U.S. market?

03:10:19 25 A. They were either exited or in the process of exiting

03:10:22 1 the U.S. market with these products.

03:10:25 2 Q. Then what was the license amount for this agreement?

03:10:29 3 A. 4 -- I think it was over \$400,000.

03:10:42 4 MR. LEE: Paragraph 3, Denver. One more.

03:11:02 5 BY MR. LEE:

03:11:04 6 Q. Do you see that there, Mr. Perdue?

03:11:05 7 A. I do. \$435,000.

03:11:19 8 MR. LEE: Denver, can you publish Slide 10.

03:11:23 9 BY MR. LEE:

03:11:30 10 Q. Now, you've also reviewed Lone Star's other license

03:11:35 11 agreements at the time you wrote your expert report; is

03:11:38 12 that -- is that right?

03:11:39 13 A. Yes. During that period of time, I reviewed these

03:11:42 14 agreements.

03:11:42 15 Q. And what other license agreements did you review?

03:11:45 16 A. Well, these are the other two. It's the Acer and the

03:11:51 17 NEC agreement.

03:11:52 18 Q. And the Acer agreement, you have some -- you have a

03:11:56 19 note there right behind a dollar amount. Can you explain

03:12:00 20 that to us?

03:12:01 21 A. Yes. That says: Equates to implied royalty rate of

03:12:05 22 \$0.61 compared to our rate of \$0.57.

03:12:11 23 Q. And why did you put that note there?

03:12:15 24 A. So it's this idea of an implied royalty rate again.

03:12:18 25 There was a certain number of units that were disclosed

03:12:21 1 on -- that related to this Acer agreement. And I knew what  
03:12:26 2 the amount of money was, so I took the amount of money,  
03:12:29 3 divided it by the amount of stated units disclosed, and  
03:12:33 4 came up with that \$0.61 number.

03:12:35 5 Q. Okay. And you -- what was the -- based on your review  
03:12:39 6 of these three license agreements, how did that impact your  
03:12:46 7 assessment of the hypothetical negotiations?

03:12:48 8 A. I didn't give these license agreements much weight at  
03:12:53 9 all because it's that idea of compulsion. They -- the  
03:12:59 10 parties were compelled in this situation to come up with an  
03:13:02 11 agreement, and it wasn't like a -- a normal market  
03:13:09 12 transaction, so I discounted these agreements and similar  
03:13:15 13 agreements from ASUS.

03:13:17 14 Q. And that's because in a hypothetical negotiation, the  
03:13:20 15 parties are coming to the table voluntarily?

03:13:22 16 A. That's right. That's right.

03:13:24 17 Q. Earlier you also mentioned you reviewed ASUS's  
03:13:27 18 licenses; is that correct, Mr. Perdue?

03:13:29 19 A. Yes.

03:13:29 20 Q. What type of licenses did you review?

03:13:34 21 A. I recall four, and they, too, were granted in the  
03:13:39 22 process of some kind of a litigation or threat of  
03:13:42 23 litigation.

03:13:48 24 Q. What is your analysis of those four licenses and how it  
03:13:53 25 impacts the hypothetical negotiations?

03:13:55 1 A. Similar answer. I didn't really give it any weight  
03:13:58 2 because of this element of compulsion associated with it.  
03:14:08 3 Q. Those four licenses that you reviewed, where did they  
03:14:11 4 come from?  
03:14:12 5 A. Those were produced by ASUS.  
03:14:15 6 Q. Did you review any other materials concerning ASUS's  
03:14:19 7 licenses aside from -- I'm sorry, go ahead.  
03:14:21 8 A. Yes, I did. I found some licenses online.  
03:14:24 9 Q. Why did you search online?  
03:14:26 10 A. I was trying to be thorough, so I was looking for  
03:14:30 11 licenses that ASUS engaged in with others through my own  
03:14:34 12 independent research.  
03:14:36 13 Q. Can you briefly describe what type of licenses those  
03:14:39 14 were?  
03:14:40 15 A. I identified four other licenses through my online  
03:14:43 16 research.  
03:14:43 17 Q. How did the review of those licenses, the ones that  
03:14:59 18 ASUS produced, in addition to the ones that you searched  
03:15:02 19 online, impact your hypothetical negotiations analysis?  
03:15:07 20 A. Again, it really just didn't carry much weight because  
03:15:10 21 the ones that I found online, they, too, looked like they  
03:15:15 22 were the result of some kind of litigation or settlement or  
03:15:16 23 threat of litigation, so I didn't give them really any  
03:15:21 24 weight.  
03:15:45 25 MR. LEE: Denver, can you put up P-35?

03:15:48 1 BY MR. LEE:

03:16:15 2 Q. Mr. Perdue, what is this document --

03:16:19 3 MR. OLIVER: Sorry. I apologize.

03:16:22 4 THE COURT: Continue.

03:16:25 5 BY MR. LEE:

03:16:25 6 Q. Mr. Perdue, what is this document on the screen?

03:16:28 7 A. This is the 3 -- what I refer to as the 313 -- the 313

03:16:35 8 spreadsheet.

03:16:35 9 Q. And whose data is on -- is this on the spreadsheet?

03:16:43 10 A. If you look at the bottom left-hand side, the tab there

03:16:46 11 says, ACI, which is ASUS's U.S. subsidiary, as I understand

03:16:54 12 it.

03:16:55 13 Q. So this spreadsheet contains Defendant ASUS over in

03:17:02 14 Taiwan's -- their subsidiary's sales data; is that correct?

03:17:05 15 MR. OLIVER: Objection. Leading.

03:17:07 16 THE COURT: Can you rephrase the question?

03:17:10 17 BY MR. LEE:

03:17:16 18 Q. Whose information is on the spreadsheet?

03:17:18 19 A. My understanding, that this is ASUS's U.S. subsidiary's

03:17:22 20 information.

03:17:23 21 Q. From what period to what period?

03:17:31 22 A. This spreadsheet starts in 2013. It was a partial year

03:17:36 23 for 2013, and --

03:17:40 24 THE WITNESS: Dallas [sic], if you could go to the

03:17:42 25 right --

03:17:42 1 A. I think it stops -- yeah, it stops in 2019.

03:17:49 2 BY MR. LEE:

03:17:49 3 Q. And lists year by year; is that correct?

03:17:52 4 A. Yes. And I believe this 2019 was also a partial year,

03:17:57 5 and then there was another spreadsheet that I think gave us

03:18:01 6 the full year of 2019.

03:18:05 7 MR. LEE: Denver, can you move the spreadsheet to

03:18:13 8 Column A1?

03:18:15 9 BY MR. LEE:

03:18:17 10 Q. What does that column -- the product model name, what's

03:18:21 11 listed here? What type of information?

03:18:22 12 A. Yeah, so there's a product type in that first column,

03:18:25 13 and then there's a model name in Column B.

03:18:28 14 Q. Is this listing ASUS's model numbers?

03:18:38 15 A. That's my understanding.

03:18:42 16 MR. LEE: Denver, can you scroll from Row 4

03:18:48 17 through about 265? If we go back to Column A1.

03:19:22 18 BY MR. LEE:

03:19:23 19 Q. There's a description of net QTY. What does that mean,

03:19:28 20 Mr. Perdue?

03:19:29 21 A. Net quantities.

03:19:30 22 Q. And what does that signify on the spreadsheet?

03:19:34 23 A. That's basically the net amount of quantities that you

03:19:38 24 sold, less returns and other adjustments where someone

03:19:42 25 might have returned the unit. That's the net number.

03:19:45 1 Q. And what about net revenue, what does that signify?

03:19:52 2 A. Same idea, but it's the revenue associated with those

03:19:56 3 units, so it's gross revenue less returns and allowances,

03:20:01 4 any chargebacks or anything like that. It's basically the

03:20:02 5 portion of the revenue that you get to keep.

03:20:04 6 Q. And about the net cost? What does that signify?

03:20:07 7 A. Same -- same exact idea, but on the cost side of the

03:20:11 8 equation. It's the net number.

03:20:12 9 Q. How did you use this information in your analysis of

03:20:17 10 damages?

03:20:21 11 A. So the revenue number is used as the basis for the

03:20:28 12 royalty base. I also took the difference between the net

03:20:31 13 revenue and the net cost to calculate a profitability

03:20:35 14 number. And then I also did some math involving the

03:20:39 15 quantities to get some averages, profitability per unit,

03:20:44 16 that kind of thing. So I used all of these numbers in one

03:20:47 17 way or another.

03:21:01 18 MR. LEE: Denver, can you publish P-94?

03:21:06 19 BY MR. LEE:

03:21:23 20 Q. Mr. Perdue, do you recognize this document?

03:21:25 21 A. Scroll up to the very top of it. Are we at the top?

03:21:40 22 Q. Yes. That says: Period March '13 through March '20.

03:21:47 23 A. Yes. Yes, I do.

03:21:48 24 Q. What document is this?

03:21:49 25 A. This was the document that I was referring to earlier

03:21:57 1 that had some extended periods on the end of it. So this  
03:22:00 2 went through March of 2020.

03:22:02 3 Q. And who provided the document?

03:22:04 4 A. ASUS.

03:22:10 5 Q. Whose data is on the document?

03:22:12 6 A. It's the U.S. subsidiary data again.

03:22:16 7 Q. How did you use this document, P-94 and P-93 [sic], in  
03:22:31 8 evaluating damages in this case?

03:22:32 9 A. Yeah, so it's the same thing. This was the most  
03:22:34 10 current data because it went through March of 2020, so I  
03:22:37 11 actually used this more than I did the other one because  
03:22:41 12 this was basically a restatement of the earlier one, plus  
03:22:45 13 the new data. So I used it to look at sales overall. I  
03:22:51 14 used it -- what the sales trend was, the profitability. I  
03:22:59 15 looked at all those different financial metrics.

03:23:02 16 Q. And this is the data that you reviewed coming from  
03:23:05 17 Defendant's U.S. subsidiary?

03:23:07 18 A. Yes.

03:23:08 19 Q. Did you review any financial data from Defendant  
03:23:11 20 itself?

03:23:11 21 A. From the Taiwanese parent, I did not see any data from  
03:23:18 22 the Taiwanese parent, no.

03:23:22 23 Q. Would you have -- if that information was available,  
03:23:27 24 would you have reviewed it?

03:23:29 25 A. Yes.

03:23:30 1 MR. LEE: Your Honor, I would like to move for the  
03:23:34 2 admission of P-35 and P-94.

03:23:37 3 THE COURT: Any objections?

03:23:38 4 MR. OLIVER: Your Honor, do we have to follow any  
03:23:40 5 special procedures for confidential exhibits or --

03:23:44 6 THE COURT: Is there some reason the document -- I  
03:23:48 7 mean, the courtroom needs to be sealed for purposes of  
03:23:51 8 discussing --

03:23:52 9 MR. OLIVER: If he had started to get into the  
03:23:54 10 numbers, I would have asked to have the courtroom sealed,  
03:23:57 11 but he hasn't asked about the numbers. So it's just  
03:24:02 12 exhibits at this point.

03:24:04 13 THE COURT: But no objection to its admission; is  
03:24:06 14 that correct?

03:24:06 15 MR. OLIVER: No objection to admission.

03:24:07 16 THE COURT: Very well. It'll be received.

03:24:09 17 MR. LEE: Thank you, Your Honor.

03:24:11 18 BY MR. LEE:

03:24:15 19 Q. Did P -- did the data in P-35 and P-94, did you use  
03:24:22 20 that to perform an analysis on the financial performance  
03:24:29 21 and profitability of ASUS?

03:24:32 22 A. I did.

03:24:34 23 MR. LEE: Denver, Slide 12.

03:24:37 24 BY MR. LEE:

03:24:46 25 Q. You analyzed the financial performance of ASUS. How

03:24:51 1 was it?

03:24:52 2 A. Yeah. So the data -- the data at the bottom is the  
03:24:56 3 data that I obtained from the spreadsheets that we talked  
03:25:00 4 about earlier. And it's basically saying for the full  
03:25:03 5 years of 2014 through 2019, net revenues were consistently  
03:25:10 6 in the two to \$300 million range and profits -- you know,  
03:25:17 7 the difference between the revenue minus the cost that was  
03:25:20 8 presented on the spreadsheets were consistently in the 40  
03:25:23 9 to \$50 million range.

03:25:25 10 The first bullet point, though, I got that out of  
03:25:28 11 their annual report.

03:25:31 12 Q. Why did you look at the financial performance of ASUS  
03:25:34 13 in evaluating damages?

03:25:36 14 A. That's one of the factors that we're instructed to  
03:25:39 15 consider in the Georgia-Pacific factors.

03:25:42 16 Q. When you looked at ASUS's numbers, how did that -- how  
03:25:46 17 did that impact your assessment?

03:25:48 18 A. Well, it tells you that it's a commercially successful  
03:25:51 19 product and that it's profitable and that's -- those are  
03:25:55 20 some of the considerations in these Georgia-Pacific  
03:25:57 21 factors.

03:25:58 22 Q. Did you evaluate industry licenses in assessing what  
03:26:29 23 the damages should be in this case?

03:26:31 24 A. I did.

03:26:32 25 Q. And why did you do that?

03:26:33 1 A. Because, again, that's one of the things that the  
03:26:37 2 factors instructs us to do. And it's like the house slide  
03:26:40 3 that we looked at earlier. If you -- if you're interested  
03:26:44 4 in buying a house, you're going to go out and you're going  
03:26:46 5 to pull some comparable information about houses in that  
03:26:49 6 area to give your sense of self -- give yourself a sense of  
03:26:52 7 what the -- what the right price might be. So it's the  
03:26:55 8 same idea here.

03:26:56 9 Q. So how did you go about looking for what licenses were  
03:27:00 10 out there in the industry?

03:27:01 11 A. So I searched for -- tried to initiate a search in  
03:27:13 12 three places, and I also looked at industry data from LES  
03:27:18 13 to give me just a general sense of what the neighborhood  
03:27:27 14 looked like, if you will.

03:27:28 15 Q. You mentioned you searched for -- searched on -- for  
03:27:30 16 two places?

03:27:31 17 A. There were two proprietary databases that I -- that I  
03:27:39 18 searched. I did online searching, and then I consulted LES  
03:27:45 19 survey data.

03:27:51 20 Q. The two proprietary databases that you searched, why  
03:27:56 21 did you search those databases?

03:27:56 22 A. So these are proprietary databases that you have to pay  
03:27:57 23 to access, and it's two companies that compile lots of  
03:28:01 24 license agreements, and then you pay a subscription to get  
03:28:01 25 in to search those databases.

03:28:02 1 One is RoyaltySource, and the other is called  
03:28:06 2 ktMINE. But I was only successful with one of them.  
03:28:09 3 Q. Which one were you not successful with?  
03:28:14 4 A. RoyaltySource didn't have anything.  
03:28:17 5 Q. And what about the other one?  
03:28:18 6 A. ktMINE, I was able to find some license agreements.  
03:28:22 7 Q. How long did you search on ktMINE?  
03:28:26 8 A. I spent the good part of about two days looking for  
03:28:30 9 license agreements, and I started out at a very, very  
03:28:34 10 detailed level where I was using terms in the patent. You  
03:28:38 11 know, you've heard hue and saturation. And so I was  
03:28:43 12 pulling out some technical terminology from the patents to  
03:28:49 13 look for license agreements and was coming up with nothing.  
03:28:51 14 So I started to broaden that search more broadly  
03:28:55 15 to video and other analogous technologies after I came up  
03:29:01 16 dry with some of the really technical stuff that directly  
03:29:04 17 went into the patent.  
03:29:05 18 Q. And -- so did that come up with some agreements, this  
03:29:13 19 search?  
03:29:14 20 A. I did. I came up with some agreements, that's right.  
03:29:18 21 Q. How many?  
03:29:18 22 A. 14 -- there's a total of 18 on the list that I  
03:29:22 23 summarized that's in my report. And of those, I ultimately  
03:29:26 24 used about ten to come up with a percentage royalty rate  
03:29:30 25 that I used.

03:29:31 1 Q. Aside from the RoyaltySource, which yielded no results,  
03:29:41 2 you had great search results from ktMINE, what other  
03:29:44 3 agreements came up -- came out through your search?  
03:29:48 4 A. Well, I did some online searching, and so ktMINE  
03:29:53 5 yielded 14 of the license agreements, and my own online  
03:29:57 6 searching revealed four more.  
03:30:05 7 Q. If I could have you turn to the binder, Volume II.  
03:30:12 8 Do you have the binder, Mr. Perdue?  
03:30:25 9 A. Volume II? That's Volume I. There's Volume II. Okay.  
03:30:50 10 Q. Tab P-95, please.  
03:31:14 11 A. Okay. Ready.  
03:31:15 12 Q. What are these documents?  
03:31:16 13 A. These are the 18 license agreements that we -- that we  
03:31:22 14 talked about just a moment ago, or licensing information.  
03:31:27 15 MR. LEE: Your Honor, we move for the admission of  
03:31:29 16 Exhibit P-95.  
03:31:31 17 THE COURT: Any objection?  
03:31:33 18 MR. OLIVER: No objection.  
03:31:34 19 THE COURT: Very well. It'll be received.  
03:31:38 20 BY MR. LEE:  
03:31:41 21 Q. That's the first page of these license agreements. Can  
03:31:45 22 you identify this document?  
03:31:46 23 A. Yeah. And let's -- and let's clarify. This is from  
03:31:51 24 Philips, the Dutch electronics consumer products company,  
03:31:57 25 and this is them talking about their licensing program

03:32:00 1 where they license various families of patents to others.

03:32:04 2 So this isn't a licensing agreement, but it is  
03:32:06 3 licensing information and pricing.

03:32:12 4 MR. LEE: Denver, can you scroll down to the next  
03:32:15 5 two pages?

03:32:18 6 BY MR. LEE:

03:32:18 7 Q. And what's that on the bottom of the page, Mr. Perdue,  
03:32:24 8 on the screen?

03:32:25 9 A. Are you talking about the 15 things that I've listed  
03:32:28 10 out -- that are listed out there?

03:32:30 11 Q. Correct.

03:32:31 12 A. Yeah, so that's 15 of the 16 clusters of technology  
03:32:35 13 that Philips identified. There's another one that bleeds  
03:32:39 14 over to the next page, but there's 16 in total.

03:32:50 15 MR. LEE: Denver, Page 5.

03:32:57 16 BY MR. LEE:

03:32:59 17 Q. What about this document here? Is this one of the  
03:33:02 18 documents from your search?

03:33:04 19 A. Yes. And the first one, the Philips one, and this one  
03:33:08 20 both were a result of online searching that I did on my  
03:33:12 21 own.

03:33:14 22 And this is HEVC. This relates to video  
03:33:17 23 compression technology.

03:33:17 24 Q. And these are the 18 documents from your search?

03:33:22 25 A. Yes.

03:33:22 1 Q. And what did you do after acquiring these documents?

03:33:29 2 Did you analyze them?

03:33:30 3 A. I did.

03:33:31 4 Q. Did you -- did you review them?

03:33:33 5 A. I did.

03:33:34 6 Q. Did you study them?

03:33:35 7 A. Yes.

03:33:35 8 Q. How much time did you spend looking into these

03:33:39 9 agreements and documents?

03:33:40 10 A. All in all, days.

03:34:08 11 MR. LEE: Denver, can you turn to Page 248.

03:34:17 12 BY MR. LEE:

03:34:20 13 Q. This must be the 11th document. You circled it

03:34:26 14 with 11?

03:34:27 15 A. Yes.

03:34:27 16 Q. Who is this document between?

03:34:33 17 A. The parties on this one are Tellurian, as the licensor,

03:34:44 18 and Voyager Graphics, as the licensee.

03:34:55 19 Q. And you considered this document as -- and evaluated it

03:35:00 20 as part of your royalty rate analysis?

03:35:02 21 A. Yes.

03:35:03 22 Q. What about the document on Page 330?

03:35:08 23 MR. LEE: Denver?

03:35:17 24 BY MR. LEE:

03:35:19 25 Q. What is this document?

03:35:19 1 A. So that was the last document in the list of 18 that I  
03:35:23 2 was talking about and this relates to audio technology.  
03:35:27 3 I did consider this document, but I ultimately  
03:35:31 4 excluded it. It was a bit of an outlier and didn't seem to  
03:35:35 5 be as on-target, so I excluded it.  
03:35:38 6 Q. Okay.  
03:35:45 7 MR. LEE: Denver, Slide 13.  
03:35:56 8 BY MR. LEE:  
03:35:57 9 Q. Mr. Perdue, did you prepare this slide?  
03:35:58 10 A. I did.  
03:35:59 11 Q. Can you explain to us what this slide tells us?  
03:36:08 12 A. Yes. This slide is a really high level summary of  
03:36:11 13 those 18 agreements that we were just talking about that  
03:36:16 14 compromised 300-plus pages.  
03:36:22 15 Q. And you prepared this summary after you reviewed and  
03:36:27 16 analyzed these 18 agreements?  
03:36:28 17 A. Yes.  
03:36:29 18 Q. Why are some of the rows highlighted and others not?  
03:36:34 19 A. So the highlighted agreements, those are all percentage  
03:36:38 20 royalty rates.  
03:36:39 21 So at the top, it's royalty rates that deal with  
03:36:42 22 per-unit rates, like dollars per-unit. And in Section B,  
03:36:46 23 in the middle where you see the yellow, that's rate --  
03:36:49 24 rates that deal with percentages of revenue. And that was  
03:36:54 25 the bulk of the rates. And so the ones highlighted in

03:36:58 1 yellow are the ones that I ultimately used for my  
03:37:02 2 calculation at the bottom.

03:37:03 3 Q. Does the -- does the numbering system 1 through 18  
03:37:09 4 track your identification on the actual exhibit itself?

03:37:15 5 A. Yes, it does.

03:37:16 6 Q. So No. 1, that's the first agreement that we reviewed  
03:37:20 7 on the screen?

03:37:22 8 A. Yes, that's the Philips licensing program, that's  
03:37:26 9 right.

03:37:26 10 Q. Why is that agreement not highlighted?

03:37:32 11 A. Well, first of all, the bulk of the information that I  
03:37:36 12 was able to obtain stated royalties on a percentage basis.  
03:37:40 13 So it was an apples-to-oranges problem. That's a  
03:37:46 14 dollar-per-unit basis, and the bulk of the information that  
03:37:49 15 I was using was a percentage basis, but I do consider it  
03:37:52 16 later.

03:37:55 17 MR. LEE: Denver, can you pull up 1 through 5?

03:38:01 18 BY MR. LEE:

03:38:03 19 Q. But this was a -- technology on displays, right? It  
03:38:10 20 had to contain a technology cluster on TV, correct?

03:38:15 21 A. Well, the whole thing is for televisions and set-top  
03:38:21 22 boxes, all of that technology.

03:38:22 23 Q. But you excluded it?

03:38:24 24 A. I didn't exclude it. I considered it, and I use it  
03:38:27 25 later, but it didn't have a percentage royalty rate, which

03:38:32 1 is what I needed for my calculation for this -- for what's  
03:38:35 2 highlighted in the next section.

03:38:37 3 Q. So you considered it, but it had to do with TVs, but it  
03:38:41 4 was not used to calculate the royalty rate?

03:38:43 5 A. That's right. That's right.

03:38:45 6 MR. LEE: Denver, if you go back out.

03:38:52 7 BY MR. LEE:

03:38:53 8 Q. Without having to go through each of the rows that are  
03:38:55 9 not highlighted, what's the -- what's the general rationale  
03:39:00 10 for not using these agreements as part of your rate  
03:39:04 11 consideration calculation?

03:39:05 12 A. Yeah, so let's focus on the middle section first,  
03:39:09 13 Section B.

03:39:10 14 Again, these are all percentage rates, so that's  
03:39:12 15 good because I wanted a percentage rate because that looked  
03:39:17 16 like the most promising type of rate based upon this  
03:39:20 17 information.

03:39:20 18 THE WITNESS: Go -- go back out, Denver, so that  
03:39:23 19 we can see the first one. Yeah, zoom in on 5 there so that  
03:39:35 20 we can see it a little bit better. Yeah, that's good.

03:39:42 21 A. So Mondis/Chimei Innolux, that was actually an Eastern  
03:39:49 22 District of Texas case, and it dealt with video displays.  
03:39:50 23 Well -- so that's great. It was on target. But it was the  
03:39:53 24 result of litigation, so there's the compulsion issue.

03:39:56 25 So I liked that it was on target, but I didn't

03:40:01 1 like the fact that it was -- had this issue of compulsion  
03:40:04 2 tied to it. So that's why I didn't use that one.  
03:40:07 3 And then when you go down --  
03:40:08 4 THE WITNESS: Denver, if you can scroll down to  
03:40:11 5 like, 13, 14, down there. Yeah, that's good.  
03:40:15 6 A. So these two were also received --  
03:40:18 7 THE WITNESS: Scroll over to the right, please.  
03:40:20 8 A. So that was patent enforcement and licensing. So these  
03:40:26 9 were settlement agreements also. You've got the compulsion  
03:40:30 10 issue, right?  
03:40:31 11 And then let's go over to the left and let's look  
03:40:34 12 at that last one, No. 18.  
03:40:36 13 And this is something we just talked about,  
03:40:40 14 Mr. Lee. You brought up that Max Sound agreement. This  
03:40:44 15 had a 50 percent rate and --  
03:40:44 16 BY MR. LEE:  
03:40:48 17 Q. That's a big rate.  
03:40:49 18 A. It is. It's a big rate, but it was just not  
03:40:53 19 applicable. It was an outlier. I didn't think that it  
03:40:56 20 made sense to include it, so I excluded it.  
03:41:00 21 Q. Well, let's focus on the ones that are highlighted in  
03:41:03 22 yellow.  
03:41:04 23 A. Okay.  
03:41:04 24 Q. Those are the ones that you used to determine the  
03:41:07 25 royalty rate in this case?

03:41:09 1 A. Yes.

03:41:21 2 Q. For example, Row No. 6, who are the parties of the

03:41:24 3 license agreement?

03:41:25 4 A. So it was Princeton University and two other

03:41:30 5 universities that were involved in that licensing

03:41:32 6 transaction. They were the licensor of the technology.

03:41:35 7 Q. What were the royalty rates in that license agreement?

03:41:37 8 A. That was 3 percent, and I looked at the high and lows.

03:41:42 9 Some of these license agreements, you're going to have a

03:41:45 10 high number based upon some factor and a low number. There

03:41:48 11 might be various terms related to that, but the idea here

03:41:52 12 is just to get a general spread. And in this case, it was

03:41:55 13 just one rate, 3 percent.

03:41:56 14 Q. Do you remember how many patents were involved in this

03:41:59 15 license agreement?

03:42:00 16 A. It was several. It was -- it was multiple patents.

03:42:04 17 Q. If I could turn your attention to Row No. 15,

03:42:25 18 Mr. Perdue.

03:42:26 19 A. Yes.

03:42:26 20 Q. Whose agreement is that between?

03:42:29 21 A. The licensor, the owner of the patent and the one

03:42:32 22 granting the rights is Psyko Audio Labs, and the licensee

03:42:39 23 that the rights are being granted to is Exeo Entertainment.

03:42:45 24 Q. And what's the license rate for this particular

03:42:49 25 agreement?

03:42:49 1 A. 5 percent flat.

03:42:51 2 Q. And what about the technology?

03:42:52 3 A. This was -- yeah, surround sound headphone technology

03:42:55 4 for gaming.

03:42:55 5 Q. That doesn't seem like it's -- to be video display

03:43:02 6 technology. Why did you include this in the analysis?

03:43:04 7 A. So we -- we talked about this a little bit earlier.

03:43:07 8 When I initiated my search, I was pulling terms out of the

03:43:13 9 patent, hue, saturation, some of the other technical terms

03:43:17 10 out of the patent. I was coming up with nothing.

03:43:19 11 So I started to expand my search, and where I

03:43:23 12 ultimately expanded the search to was basically the area of

03:43:30 13 computer peripherals. So a video monitor is a computer

03:43:36 14 peripheral. A sound system is a computer peripheral. A

03:43:44 15 navigation device, a keyboard, a mouse, those are all

03:43:47 16 computer peripherals. And I did that because I wanted

03:43:50 17 enough data for it to be meaningful.

03:44:00 18 Q. So the agreements in -- highlighted in yellow were 6

03:44:03 19 through 12 and 15 through 17 were either comparable or

03:44:05 20 analogous?

03:44:05 21 MR. OLIVER: Objection. The witness is

03:44:07 22 unqualified on the comparability of the technologies.

03:44:10 23 THE COURT: Can you lay a foundation, Mr. Lee?

03:44:14 24 MR. LEE: Sure.

03:44:16 25 BY MR. LEE:

03:44:16 1 Q. Mr. Perdue, why did you -- how did you evaluate these  
03:44:21 2 agreements and determine to include them in here?

03:44:24 3 A. Well, again, I started out looking at the patent and  
03:44:28 4 using terms from the patent. I couldn't find anything that  
03:44:32 5 went to that level of detail. Had I found, let's say, 40  
03:44:37 6 or 50 patents that had hue and saturation and color  
03:44:41 7 adjustment and all of that in it, I would have then spoken  
03:44:44 8 to Dr. Ducharme, I would have gotten his opinion on it.  
03:44:47 9 But I ended up not needing to do that because there was  
03:44:51 10 just a dearth of information. So I went to this higher  
03:44:58 11 level and pulled these more economically comparable and  
03:45:03 12 analogous technologies related to computer peripherals.

03:45:07 13 Q. What Georgia-Pacific factor was this analysis performed  
03:45:11 14 for?

03:45:11 15 A. Yeah. So there are several factors that talk about  
03:45:15 16 that, and I can't remember the factor right now. We'll get  
03:45:18 17 into them later, but comparable and analogous is definitely  
03:45:23 18 some of the language in the Georgia-Pacific factors related  
03:45:25 19 to this issue.

03:45:26 20 Q. So this was your analysis for that factor which we'll  
03:45:28 21 go into detail a little later?

03:45:32 22 A. Yeah. The -- and think it was the industry rate. I  
03:45:35 23 think it's Factor 12, but we'll look at that in a little  
03:45:38 24 bit, I'm sure.

03:45:39 25 Q. So how did you -- having selected these agreements

03:45:44 1 highlighted in yellow, how did you determine the royalty  
03:45:50 2 rate for this case?

03:45:51 3 A. So I started with the rates in yellow. They were all  
03:45:58 4 percentage rates. Then I looked at this column related to  
03:46:04 5 exclusivity, and I noted that some were exclusive and some  
03:46:09 6 were non-exclusive.

03:46:10 7 The patent license that would result from the  
03:46:13 8 hypothetical negotiation here would be a non-exclusive  
03:46:16 9 license. Non-exclusive licenses are generally understood  
03:46:21 10 to be worth less than an exclusive licenses. So I needed  
03:46:24 11 to do some sort of an adjustment for those exclusive  
03:46:28 12 licenses.

03:46:30 13 So what you see in the section below, in  
03:46:34 14 Section C, is where I took a 35 percent discount for the  
03:46:39 15 exclusive right to bring it down to account for the  
03:46:44 16 non-exclusivity that we're dealing with here.

03:46:46 17 MR. LEE: If we could move to Section 3 on the  
03:46:49 18 screen. Denver, Slide 13, Section C, please.

03:47:10 19 BY MR. LEE:

03:47:17 20 Q. Is this the section where you do the discount for a  
03:47:20 21 non-exclusive license?

03:47:21 22 A. Yeah. And you can see that the rates that  
03:47:24 23 were 3 percent up above are now 1.95 percent. The ones  
03:47:30 24 that were already non-exclusive, I didn't adjust those, but  
03:47:36 25 the ones that were exclusive, I did adjust.

03:47:40 1 Q. And why did you adjust the rate down -- what was the  
03:47:44 2 rate that you adjusted down?

03:47:45 3 A. So the ones that I adjusted down were the ones that  
03:47:49 4 were marked exclusive, so it would be -- the first one we  
03:47:53 5 see here for 1997 --

03:47:55 6 THE WITNESS: Denver, can you scroll over to the  
03:47:57 7 left a little bit? Yeah, that's great, right there.

03:48:01 8 A. So the exclusive ones are 6, 7, 8, 9. No. 10 was  
03:48:06 9 already non-exclusive. No. 11 is exclusive. No. 12 is  
03:48:14 10 non-exclusive. 15, 16 are exclusive, and then 17 was  
03:48:22 11 non-exclusive.

03:48:22 12 BY MR. LEE:

03:48:22 13 Q. What's the purpose of adjusting down the rate to  
03:48:25 14 account for non-exclusivity?

03:48:26 15 A. It was kind of an issue of comparability and fairness,  
03:48:31 16 that if we're talking about a non-exclusive rate here, then  
03:48:34 17 I need to take the exclusive rate and I need to do some  
03:48:37 18 kind of an adjustment to account for that.

03:48:40 19 Q. And how much did you adjust down in this -- when you  
03:48:43 20 made your adjustment?

03:48:45 21 A. On the exclusive rates, 35 percent downward.

03:48:49 22 Q. Why did you adjust it down 35 percent?

03:48:51 23 A. Based upon the data, I had two data points. There was  
03:48:56 24 one study that I looked at that pointed to a 50 percent  
03:49:00 25 rate adjustment. And then there was another data point

03:49:01 1 that I had related to a negotiation with DuPont that  
03:49:07 2 pointed to a 27 percent adjustment.

03:49:08 3 I put more weight on the negotiated adjustment  
03:49:11 4 with DuPont. They were a client of mine. They're  
03:49:18 5 sophisticated. I put a little bit more weight on that  
03:49:21 6 negotiated adjustment amount and ended up with 35 percent  
03:49:25 7 which is a number basically almost in the middle.

03:49:27 8 Q. What about the other source? What was the percentage  
03:49:32 9 adjustment for the first source?

03:49:34 10 A. So that was the Varner Study, and it was this very  
03:49:42 11 structured study where Mr. Varner looked at public filings  
03:49:50 12 for companies that disclosed license agreements where there  
03:49:53 13 was an exclusive license but there was this additional  
03:49:57 14 provision that said: Oh, by the way, if this license  
03:50:00 15 becomes non-exclusive, here is the amount of reduction that  
03:50:04 16 we're going to use in the royalty rate. So it was this  
03:50:07 17 very structured search on this very unique group of  
03:50:13 18 licensees and licensors.

03:50:15 19 Q. How many agreements were part of the Varner Study?

03:50:20 20 A. About 1,400.

03:50:23 21 Q. Wouldn't that study be more weight in figuring out what  
03:50:29 22 the -- adjust down for being non-exclusive?

03:50:33 23 A. Yeah, I mean, I certainly considered it. But, again,  
03:50:37 24 the DuPont number, the 27 percent number, that was a real  
03:50:41 25 live negotiation. This group of exclusive licenses that

03:50:46 1 had this kind of pre-packaged discount built in, there  
03:50:53 2 wasn't -- that 50 percent wasn't really kind of a direct  
03:50:56 3 negotiation. That was a part of this other agreement and  
03:51:01 4 this other negotiation. The 27 percent from DuPont is a  
03:51:03 5 real live negotiation that went from 5.5 percent  
03:51:07 6 to 4.0 percent which is a 27 percent discount.

03:51:10 7 Q. Is your discount rate reasonable?

03:51:12 8 A. I believe it is.

03:51:13 9 Q. Would a 50 percent-plus discount rate be reasonable?

03:51:18 10 A. No. I think going to the extreme like that, I don't  
03:51:24 11 think that reflects the reality of situations like the  
03:51:27 12 DuPont situation.

03:51:27 13 Q. So after you went through and factored in a discount of  
03:51:33 14 35 percent for the non-exclusive licenses, what did you do  
03:51:39 15 next?

03:51:39 16 A. So then I did the statistical analysis that you see at  
03:51:45 17 the bottom where I basically said: Okay, what are the  
03:51:49 18 percentiles associated with these licenses and these  
03:51:53 19 rates -- these adjusted rates that I have developed here?  
03:51:56 20 And what I came up with was a median value of --

03:52:03 21 MR. OLIVER: Objection. Your Honor, we object to  
03:52:05 22 the use of industry average rates for the same reasons  
03:52:09 23 stated in our briefing.

03:52:12 24 MR. LEE: It's in his expert report, Your Honor.  
03:52:14 25 He's just testifying to the --

03:52:16 1 MR. OLIVER: We'd like to maintain the objection  
03:52:19 2 to relevance, more prejudicial than probative.

03:52:23 3 THE COURT: Overruled. You may proceed.

03:52:25 4 MR. OLIVER: May I have a standing objection so I  
03:52:29 5 don't have to keep standing up?

03:52:30 6 THE COURT: Any objection to a standing objection?

03:52:33 7 MR. LEE: No.

03:52:33 8 THE COURT: Very well.

03:52:36 9 A. So, yeah, I need to make a correction first. This  
03:52:39 10 isn't an average. It's a median. I'm using a median. I'm  
03:52:42 11 not using an average, so I think that's relevant here.

03:52:46 12 BY MR. LEE:

03:52:47 13 Q. Go ahead and explain how you arrived at the median.

03:52:51 14 A. Yeah. So I arrived at the median by looking -- the  
03:52:53 15 median is, you know, the middle number. So of the  
03:52:58 16 observations that were identified in Section C, I find the  
03:53:01 17 middle number. And you do that because with an average,  
03:53:05 18 outliers can distort the value. I didn't use an average.  
03:53:10 19 I looked at the median. That's the middle number. I felt  
03:53:13 20 that was more reasonable. So it's 2.0 to 2.6 percent for  
03:53:18 21 the low to high.

03:53:21 22 MR. LEE: Denver, Slide 15, please.

03:53:26 23 BY MR. LEE:

03:53:34 24 Q. Mr. Perdue, why did you prepare this slide?

03:53:38 25 A. Early on, you asked me about the issue of

03:53:40 1 reasonableness, and I think there's different ways to look  
03:53:42 2 at reasonableness. And this is one of those ways.

03:53:48 3 Q. And how does this show whether your rate is reasonable  
03:53:51 4 or not?

03:53:51 5 A. Well, I basically stacked up on the slide some of these  
03:53:55 6 rates that we've been talking about, and I've made it more  
03:53:58 7 digestible for human consumption, so that we can all look  
03:54:02 8 at the picture instead of looking at spreadsheets with tiny  
03:54:05 9 fonts. But you can see that the industry rates generally  
03:54:09 10 are in the 3 to 6 percent range. You can see that the  
03:54:13 11 ktMINE rates span from 2 percent to 50 percent.

03:54:17 12 Now, I threw out the 50 percent observation. When  
03:54:22 13 you throw that out, it's 2 percent to 15 percent. And then  
03:54:26 14 there's this 3 percent rate with Universal Display Corp.  
03:54:33 15 And what you see is that the 2.3 percent rate that I  
03:54:35 16 selected is way at the left-hand side of all of those  
03:54:39 17 rates, thus suggesting that it's reasonable and  
03:54:45 18 conservative.

03:54:51 19 MR. LEE: Slide 16, Denver.

03:54:53 20 BY MR. LEE:

03:54:54 21 Q. So this is another slide you prepared. How does this  
03:54:57 22 help us determine whether your rate is reasonable or not?

03:55:01 23 A. So this is those dollar rates that we talked about that  
03:55:04 24 were in Section A. And, again, I was looking more for  
03:55:08 25 percentage rates because the bulk of what I was able to

03:55:11 1 find were percentage rates. But I did use these dollar  
03:55:14 2 rates, these per unit rates, and this is one of the ways  
03:55:18 3 that I used it, was to show how the \$0.57 per unit rate  
03:55:26 4 that results from my royalty calculation stacks up against  
03:55:30 5 these per unit rates from the information that we saw in  
03:55:37 6 the summary document. And, again, it's within the goal  
03:55:40 7 posts.

03:55:46 8 MR. LEE: Slide 17, Denver.

03:55:49 9 BY MR. LEE:

03:55:49 10 Q. And what about this rate or this slide?

03:55:51 11 A. So one of the Georgia-Pacific factors, Factor 15, says  
03:55:55 12 that -- that this negotiation occurs and that the licensee  
03:56:01 13 is going to bargain for a rate that allows them to still  
03:56:06 14 make a profit basically. You can't have the rate so high  
03:56:10 15 that the licensee that's going to use the patent can't make  
03:56:15 16 any money selling the product that uses the patent. So one  
03:56:18 17 of the things that we look at is this issue of  
03:56:21 18 profitability.

03:56:21 19 What this slide tells us is that at \$0.57 per  
03:56:27 20 unit, that equates to 1.9 percent of profits which are  
03:56:32 21 about \$30 per monitor. So that tells us that there's lots  
03:56:39 22 of profitability left. And if the hypothetical negotiators  
03:56:45 23 had landed at the rate that I've defined, they would be  
03:56:48 24 okay and the licensee would still be able to make money on  
03:56:56 25 their product.

03:57:07 1 Q. Once you determined the royalty rate, what was the next  
03:57:10 2 step in your analysis for damages?

03:57:12 3 A. Then I turned to the issue of apportionment.

03:57:15 4 Q. And what is apportionment?

03:57:17 5 A. The idea of apportionment is that you've got a bundle  
03:57:23 6 of technology. You know, you look at a screen like this,  
03:57:27 7 and there's data communication capabilities, there's a  
03:57:32 8 case, there's audio, there's video, there's a lot of  
03:57:36 9 technologies that are rolled into a piece of technology  
03:57:38 10 like this.

03:57:39 11 So what you're trying to do is isolate the  
03:57:43 12 relevant bundle of technology to which you apply the  
03:57:49 13 royalty rate. So you want to isolate that chunk of value  
03:57:53 14 that's reasonable to apply the rate to. That's what  
03:57:56 15 apportionment is.

03:58:04 16 Q. And how did you go about determining the apportionment  
03:58:08 17 factor to use in this case?

03:58:10 18 A. The best evidence available, in my opinion, was the  
03:58:22 19 Phillips data because Phillips basically said to the world:  
03:58:27 20 Here's these 16 clusters of technology that we license to  
03:58:33 21 companies all over the world if they want to make a  
03:58:36 22 television or a set-top box. That told me what this broad  
03:58:41 23 view of that technology universe looked like. And I  
03:58:46 24 isolated one of those technology clusters that I thought  
03:58:51 25 was most comparable to this --

03:58:51 1 MR. OLIVER: Objection.

03:58:53 2 A. -- idea of video adjustment and --

03:58:56 3 THE COURT: Hold on one moment.

03:58:59 4 MR. OLIVER: The answer is nonresponsive, and

03:59:02 5 he's -- the right term he's -- it's a very lengthy answer

03:59:06 6 to a --

03:59:06 7 THE COURT: Narrative?

03:59:07 8 MR. OLIVER: It's a narrative answer to a question

03:59:10 9 that wasn't asked, and he has now testified again and again

03:59:13 10 about technical comparability without being qualified on

03:59:18 11 technical comparability.

03:59:20 12 THE COURT: Overruled. You may proceed.

03:59:25 13 MR. LEE: Denver -- Denver, Slide No. 18, please.

03:59:33 14 BY MR. LEE:

03:59:33 15 Q. Mr. Perdue, you mentioned the Phillips table. Are you

03:59:36 16 talking about this information on Table 1 on this slide?

03:59:40 17 A. Yes.

03:59:41 18 Q. Who prepared the table on this slide?

03:59:48 19 A. Well, we actually looked at a lot of this information

03:59:51 20 that's in the first three columns earlier when we pulled up

03:59:55 21 the Philips licensing program information. I calculated

03:59:59 22 the last column. Everything else came from Philips.

04:00:03 23 Q. Why did you choose TV backlight and dimming?

04:00:07 24 A. When I looked at these 16 areas, that was the only area

04:00:16 25 that I saw that had anything to do with video adjustment

04:00:19 1 and control. I looked at the rest of the categories, and I  
04:00:25 2 just didn't see anything as good. So I used that as a  
04:00:28 3 proxy for this apportionment exercise.

04:00:31 4 Q. Is the Philips data reliable?

04:00:35 5 A. Yeah. They -- this is what they tell the world that  
04:00:39 6 they do their licensing at. This is their price list,  
04:00:45 7 basically.

04:00:46 8 Q. And based on the Philips data, what was the  
04:00:50 9 apportionment rate?

04:00:51 10 A. 14 percent.

04:00:53 11 Q. And how does the apportionment rate -- how is the  
04:01:11 12 apportionment rate used to determine the damages in this  
04:01:15 13 case with the other numbers that you talked about earlier?

04:01:17 14 A. Yeah. So it's -- it's a couple of big steps.

04:01:23 15 You take the big number royalty base, you multiply  
04:01:27 16 that by this 14 percent, and you get a much smaller  
04:01:32 17 adjusted royalty base. So you start out at eight hundred  
04:01:36 18 and something million dollars, and then it comes down to a  
04:01:40 19 hundred and something million dollars. And then you apply  
04:01:43 20 that royalty rate times that smaller number. That's where  
04:01:46 21 the 2.8 comes from.

04:01:49 22 MR. LEE: Denver, Slide 7.

04:01:56 23 BY MR. LEE:

04:01:57 24 Q. Is this the calculation that you were just describing?

04:02:00 25 A. Yes. This -- this follows my hand gestures from just a

04:02:04 1 moment ago. This is that two-step process where you start  
04:02:08 2 with the big number and multiply it by the 14 percent to  
04:02:11 3 isolate that technology -- that relevant technology  
04:02:15 4 cluster. Then you multiply it by the royalty rate.

04:02:19 5 Q. The come -- the graphic on the left, the  
04:02:27 6 \$881.6 million, where did that number come from?

04:02:28 7 A. That came from ASUS.

04:02:30 8 Q. Who -- how did you calculate it?

04:02:36 9 A. That was sales for the damage period.

04:02:38 10 Q. And it says sales of accused products through patent  
04:02:47 11 expiration, is that --

04:02:48 12 A. That's correct.

04:02:48 13 Q. Why is that the royalty base?

04:02:51 14 A. Because normally those royalties are applied usually to  
04:02:54 15 some kind of top -- top line number, usually some metric of  
04:02:58 16 sales.

04:02:58 17 Q. Now, you took this number and you multiplied --  
04:03:05 18 multiplied it by 14 percent. Why is that?

04:03:08 19 A. Again, to isolate that -- that cluster of this device  
04:03:14 20 that could be reasonably attributable to video adjustment  
04:03:20 21 and control. Not just color control, all types of video  
04:03:25 22 adjustment and control. That was the economic cluster that  
04:03:31 23 I was after there, and that's what the 14 percent  
04:03:34 24 represents.

04:03:34 25 Q. What does it say under the box, 14 percent on that

04:03:39 1 slide?

04:03:39 2 A. It says 86 percent reduction.

04:03:41 3 Q. And what does that mean?

04:03:44 4 A. So the reduction from the 881.6 to --

04:03:48 5 THE WITNESS: Zoom back out, Denver.

04:03:50 6 A. -- to the 123.4. That's an 86 percent reduction.

04:03:55 7 BY MR. LEE:

04:03:55 8 Q. And that came out to \$123 million?

04:03:58 9 A. Yes.

04:03:59 10 Q. Why is that called the apportioned royalty base?

04:04:03 11 A. Because we went through this apportionment step to

04:04:07 12 isolate that value.

04:04:09 13 Q. And what is the isolated value that's -- that comes out

04:04:18 14 of this apportionment?

04:04:19 15 A. Well, the ultimate value is the 2.8 million, but the

04:04:24 16 123 represents that apportioned royalty base that's that

04:04:29 17 isolated cluster of technology.

04:04:32 18 Q. What did you do with the apportioned royalty base?

04:04:36 19 A. Multiplied it times the royalty rate.

04:04:39 20 Q. And what is the number coming out of that calculation?

04:04:43 21 A. \$2.8 million.

04:04:54 22 MR. LEE: Denver, Slide No. 19.

04:05:02 23 BY MR. LEE:

04:05:03 24 Q. What does this slide show, Mr. Perdue?

04:05:05 25 A. This -- this shows really the mechanics of that

04:05:14 1 calculation. The -- what we looked at in the last slide  
04:05:17 2 was just really a high-level summary of it, but this is  
04:05:22 3 actually from my report that shows the detailed calculation  
04:05:25 4 mechanics.

04:05:27 5 MR. LEE: Okay. And can we -- Denver, Slide  
04:05:31 6 No. 9.

04:05:32 7 BY MR. LEE:

04:05:36 8 Q. Did you review Factor 1, royalties received by Lone  
04:05:40 9 Star for the '435 patent?

04:05:41 10 A. Yes, and we talked about that earlier.

04:05:43 11 Q. And what was the result of your analysis?

04:05:46 12 A. That Lone Star's kind of licensing approach is lump sum  
04:05:54 13 settlements, and there was generally no rate specified.

04:05:57 14 Q. What about Factor No. 2, royalty rates paid by ASUS for  
04:06:02 15 comparable patents? What did you determine?

04:06:04 16 A. Same answer. Lump sum amounts with really no rates  
04:06:09 17 being specified.

04:06:10 18 Q. What about Factor No. 3?

04:06:13 19 A. So this is where the 35 percent reduction comes into  
04:06:17 20 play for those exclusive licenses. This deals with the  
04:06:21 21 nature and the scope of the license, and this is where  
04:06:26 22 exclusivity enters the picture.

04:06:30 23 Q. Well -- now, when you went and analyzed these damages  
04:06:35 24 in this case, did you speak with Dr. Ducharme?

04:06:37 25 A. I did.

04:06:38 1 Q. Why did you do that?

04:06:40 2 A. I wanted his input on some of -- there was a couple of

04:06:45 3 these factors where I -- where I wanted his input, and I

04:06:48 4 know one of these, I think it was -- yeah, so No. 9 and

04:06:54 5 No. 11, I know I wanted his input on that.

04:06:59 6 I would have sought his input on the technical

04:07:03 7 issue if I had a lot of patents that we're going to get

04:07:06 8 into the weeds of the technology, but that ended up not

04:07:09 9 being necessary.

04:07:20 10 Q. Based on all that analysis, what did you determine the

04:07:22 11 rate, again, to be?

04:07:24 12 A. Yeah, so Factor 15 wraps it all up.

04:07:27 13 Factor 15 is after you've considered all of these

04:07:30 14 things -- and just a handful of these really matter in this

04:07:33 15 particular case. Factor 15 is where it wraps it all up,

04:07:37 16 and it says what's the hypothetical negotiation result

04:07:37 17 reached voluntarily?

04:07:42 18 And my opinion on that is this 2.3 percent rate

04:07:45 19 with this 14 percent apportionment factor.

04:07:50 20 Q. A one-time payment of \$2.8 million?

04:07:54 21 A. Yes, that's the total on a combined basis.

04:07:58 22 MR. LEE: Pass the witness.

04:08:00 23 THE COURT: Cross-examination?

04:08:04 24 CROSS-EXAMINATION

04:08:08 25 BY MR. OLIVER:

04:08:46 1 Q. Good afternoon, Mr. Perdue.

04:08:47 2 My name is Andrew Oliver. Good to meet you.

04:08:50 3 A. Good to meet you.

04:08:51 4 Q. Sorry to shout over you a couple times earlier. I  
04:08:51 5 don't know how powerful the microphone was. So hopefully  
04:08:54 6 it wasn't too annoying.

04:08:54 7 MR. OLIVER: May I have the Elmo, please?

04:09:01 8 THE COURT: Is it on? The light needs to be  
04:09:05 9 turned on, Mr. Oliver.

04:09:46 10 BY MR. OLIVER:

04:09:47 11 Q. Mr. Perdue, were you here when Dr. Ducharme was  
04:09:49 12 testifying?

04:09:50 13 A. The very tail end of it.

04:09:52 14 Q. Okay. Did you see this list of accused devices?

04:09:54 15 A. I did not.

04:09:55 16 Q. And I'm going to represent to you that this was shown  
04:10:00 17 during Dr. Ducharme's testimony, and he said that this was  
04:10:04 18 the devices that are accused in this case.

04:10:07 19 A. Okay.

04:10:08 20 Q. Did you, in your damages calculation, include any  
04:10:13 21 devices that aren't accused in this case?

04:10:15 22 A. Well, obviously we don't have time for me to  
04:10:20 23 cross-reference this list with the list that I have used.  
04:10:23 24 It was represented to me that the list of accused devices  
04:10:28 25 on the information provided by ASUS, that those were all

04:10:31 1 accused devices.

04:10:31 2 Q. Okay. We do have time to cross-reference those. We're

04:10:34 3 about to, but I'll walk you through that.

04:10:37 4 A. Okay.

04:10:37 5 Q. You see the first list -- the first -- does that list

04:10:43 6 appear to be alphabetical to you, except for the very last

04:10:50 7 item?

04:10:50 8 A. Yeah, other than the last -- yes, other than the last

04:11:02 9 item, I think it does look like it's alphabetical.

04:11:06 10 Q. So you see down at the bottom right, we see B1MR?

04:11:12 11 A. Bottom right. I don't see that.

04:11:18 12 Q. 135, do you see that?

04:11:20 13 A. Oh, I do, yes, yes.

04:11:22 14 Q. B1MR, right?

04:11:25 15 A. Yes.

04:11:25 16 Q. So keep that in mind, B1MR.

04:11:29 17 A. Okay.

04:11:29 18 Q. And then the next one alphabetically is C422, right?

04:11:35 19 A. Yes.

04:11:36 20 Q. Okay. I'm going to switch exhibits, so keep those two

04:11:40 21 in mind?

04:11:41 22 MR. OLIVER: May I have Exhibit P-94, please?

04:12:16 23 BY MR. OLIVER:

04:12:16 24 Q. You see, is this the spreadsheet of sales that you used

04:12:26 25 to calculate your figures in this case?

04:12:28 1 A. It appears to be, yes. It's -- I think it's the last  
04:12:32 2 one that I looked at with Mr. Lee.

04:12:34 3 Q. Okay. And you looked at it earlier when you were  
04:12:38 4 testifying today?

04:12:39 5 A. Yes, with Mr. Lee.

04:12:41 6 Q. Okay. What's the first model name there?

04:12:46 7 A. B1M.

04:12:48 8 Q. And that was not on the list of accused products,  
04:12:52 9 right?

04:12:53 10 A. Well, was that the bottom right, or was that B1MR?

04:12:58 11 Q. Would you like -- it was B1MR on the bottom right.

04:13:01 12 A. Okay.

04:13:02 13 Q. So B1M was not on the list of accused products?

04:13:06 14 A. I don't know -- if B1MR was bottom right, then I don't  
04:13:13 15 believe B1M would have been on that list if it's  
04:13:16 16 alphabetical.

04:13:17 17 Q. Okay. And you included those sales in your figures?

04:13:21 18 A. Okay.

04:13:21 19 A. Yes.

04:13:23 20 MR. OLIVER: Scroll down, please, and let's switch  
04:13:30 21 back to the ELMO, please.

04:13:36 22 BY MR. OLIVER:

04:13:37 23 Q. Now, this is alphabetical. Do you see Rows 8 and 9?

04:13:41 24 A. I do.

04:13:42 25 Q. And you see there -- you see there's a gap between the

04:13:44 1 letter C and the letter M?

04:13:45 2 A. I do.

04:13:48 3 Q. Okay.

04:13:48 4 MR. OLIVER: Can we switch back to the exhibit,

04:13:51 5 please, P-94?

04:13:52 6 BY MR. OLIVER:

04:13:53 7 Q. So you see the E1 product there?

04:13:56 8 A. I do.

04:13:56 9 Q. That's not accused, right?

04:13:58 10 A. Not if it's alphabetical, that's right.

04:14:01 11 Q. Is the E1Z product there, you see?

04:14:05 12 A. I do.

04:14:05 13 Q. That's not accused?

04:14:08 14 A. (No audible response.)

04:14:08 15 MR. OLIVER: Next screen, please.

04:14:10 16 BY MR. OLIVER:

04:14:10 17 Q. F1, do you see that?

04:14:13 18 A. I do.

04:14:14 19 Q. That's not accused, right?

04:14:16 20 A. I know that there's disagreement about this. So I'm  
04:14:19 21 not -- I'm not the technical expert, and I'm not a legal  
04:14:22 22 expert. So I know there's disagreement in terms of what's  
04:14:25 23 in and what's out. It's not my area.

04:14:27 24 Q. Okay. So you accuse -- you included money for a lot of  
04:14:34 25 products here that are not even accused of infringement in

04:14:40 1 this case?

04:14:40 2 A. Well, I don't know that because I know there's  
04:14:42 3 disagreement about that. So, again, that's not my area.

04:14:46 4 Q. Okay. If you accept my representation about the image  
04:14:50 5 we showed of the accused devices --

04:14:53 6 A. Yes.

04:14:53 7 Q. -- if that -- if my representation is true, then you  
04:14:56 8 accuse -- you included money in your figures for a lot of  
04:15:01 9 devices that aren't even accused in this case?

04:15:03 10 A. Well, I don't know what a lot is, but that would be  
04:15:06 11 true if what you've represented to me is true.

04:15:08 12 Q. Okay. Have you -- are you familiar with Mr. Brett  
04:15:11 13 Reed's report?

04:15:12 14 A. I am.

04:15:13 15 Q. You reviewed it?

04:15:14 16 A. I did.

04:15:15 17 Q. Do you recall the charts in it where he mentioned that  
04:15:19 18 there were products that were not accused that were  
04:15:22 19 included in your calculations?

04:15:24 20 A. That's where I became aware of the dispute about this  
04:15:27 21 issue of the accused products.

04:15:29 22 Q. Okay. And --

04:15:29 23 MR. OLIVER: Can we switch back to the Elmo,  
04:15:35 24 please?

04:15:36 25 BY MR. OLIVER:

04:15:36 1 Q. And this list of accused devices that I've represented  
04:15:40 2 is the list that was testified about earlier has 135  
04:15:44 3 devices on it, right?

04:15:46 4 A. Yes.

04:15:46 5 Q. And Mr. Reed, in his report, is it fair to state that  
04:15:54 6 he identified over 40 devices that you included in your  
04:15:57 7 calculations that aren't accused in this case?

04:15:59 8 A. I don't know the count, but I am familiar with the fact  
04:16:02 9 that Mr. Reed points to this issue.

04:16:05 10 Q. Would it surprise you if Mr. Reed came up during the  
04:16:11 11 defense case and testified and he said that you included  
04:16:15 12 over 40 devices that weren't even accused of infringement  
04:16:18 13 in your calculations?

04:16:19 14 A. No. Again, he state -- I know he states that in his  
04:16:23 15 report.

04:16:23 16 Q. Okay. But you didn't revise your report to remove  
04:16:26 17 those devices that aren't even accused of infringement?

04:16:29 18 A. My understanding is that there's disagreement about  
04:16:32 19 that, and I'm not in a position to assess that.

04:16:34 20 Q. Okay. But you want this jury to make ASUS pay  
04:16:38 21 Lone Star for 40 devices that aren't even accused of  
04:16:44 22 infringement?

04:16:45 23 A. That's your contention. I believe the other side's  
04:16:49 24 contention is different. And, again, that's not my area.

04:16:55 25 Q. Okay. I think we'll come back to this in a little bit

04:17:01 1 because I'm going to want to establish all of the devices  
04:17:04 2 you included in your report that aren't accused. But is it  
04:17:07 3 okay if we move to another subject for a little --  
04:17:10 4 A. Sure.  
04:17:11 5 Q. -- while?  
04:17:15 6 A. Sure.  
04:17:15 7 Q. Okay. Have you ever testified on behalf of a Defendant  
04:17:18 8 in a patent case?  
04:17:19 9 A. You know, I'd have to look at my CV. I know that my  
04:17:27 10 cases tend to be pretty evenly split between Defendants and  
04:17:31 11 Plaintiffs. So I would have to look at my CV.  
04:17:35 12 Q. Okay. But you can't think of any cases off the top of  
04:17:39 13 your head where you've testified on behalf of a Defendant  
04:17:42 14 in a patent case?  
04:17:54 15 A. Yeah, I mean, we'd have to look at the CV.  
04:18:02 16 Q. Okay. Do you recognize this picture that I've put on  
04:18:03 17 the Elmo?  
04:18:04 18 A. Yes.  
04:18:04 19 Q. That's one of the slides you presented earlier today,  
04:18:07 20 right?  
04:18:07 21 A. Correct.  
04:18:08 22 Q. And you said here that there are required assumptions  
04:18:10 23 for negotiations, right?  
04:18:13 24 A. Yes.  
04:18:13 25 Q. So those are assumptions that you have to make?

04:18:18 1 A. Those are assumptions that are understood in the  
04:18:20 2 context of this hypothetical negotiation.

04:18:21 3 Q. And those are assumptions that Mr. Reed has to also  
04:18:26 4 make, as well, right?

04:18:28 5 A. Presumably.

04:18:29 6 Q. And so even though he's testifying on behalf of the  
04:18:33 7 defense, he still has to assume the patent is valid for  
04:18:38 8 this computation, right?

04:18:42 9 A. That's correct.

04:18:43 10 Q. Even if the defense is claiming the patent is not  
04:18:46 11 valid, right?

04:18:47 12 A. True.

04:18:47 13 Q. And Mr. Reed still is going to have to assume that the  
04:18:51 14 patent is infringed even if the defense argues that the  
04:18:55 15 patent is not infringed, right?

04:18:57 16 A. Correct.

04:18:57 17 Q. And the jury could find the patent to be infringed or  
04:19:01 18 not infringed, right?

04:19:02 19 A. Sure.

04:19:03 20 Q. And the jury could find the patent to be valid or  
04:19:07 21 invalid, right?

04:19:08 22 A. Yeah.

04:19:09 23 Q. So Mr. Reed's assumptions and your assumptions don't  
04:19:12 24 have any bearing on whether the patent is actually valid or  
04:19:16 25 infringed, right?

04:19:18 1 A. It's a liability issue.

04:19:20 2 Q. Okay. And just by making that assumption, that doesn't

04:19:27 3 mean that Mr. Reed agrees that the patent is invalid and

04:19:30 4 infringed, does it?

04:19:32 5 A. No.

04:19:32 6 Q. Okay. So the date of your hypothetical negotiation,

04:19:39 7 March 13th -- and you said that's -- at the top you say

04:19:43 8 that's a negotiation between Lone Star and ASUS, right?

04:19:46 9 A. Yes.

04:19:46 10 Q. And why would Lone Star make the negotiation at that

04:19:53 11 date?

04:19:54 12 A. And this is a legal issue, but my understanding is that

04:19:57 13 that was -- that's what I understand to be the date of

04:20:00 14 first infringement.

04:20:00 15 Q. Okay. But can Lone Star enter into a negotiation for a

04:20:05 16 patent license if it doesn't own the patent on that date?

04:20:08 17 A. Well, when you enter into these types of hypothetical

04:20:12 18 negotiations, they're hypothetical and we have to take some

04:20:14 19 liberties with some of those facts.

04:20:17 20 Q. Are you aware that the patent was previously owned by

04:20:21 21 another company?

04:20:21 22 A. I am aware of that.

04:20:23 23 Q. And that Lone Star claims to have acquired it at some

04:20:28 24 point?

04:20:28 25 A. Yes.

04:20:29 1 Q. Would it surprise you if that date was after the date  
04:20:32 2 of your hypothetical negotiation?

04:20:34 3 A. No. And I don't know what that date is.

04:20:40 4 Q. Okay. So you're fine with assuming Lone Star -- you  
04:20:45 5 know the previous owner was named Oplus? Do you know that?

04:20:48 6 A. No, I did not.

04:20:49 7 Q. Okay. Well, I'm going to bring the patent up.

04:21:05 8 I'm sorry. I'll keep going. I thought I had it  
04:21:07 9 with me.

04:21:18 10 So this is Defense Exhibit 1. Do you see that?

04:21:20 11 A. I do.

04:21:21 12 Q. Is that the patent you analyzed for this case?

04:21:26 13 A. Yes.

04:21:27 14 Q. Okay. You see here that it says that the inventor was  
04:21:37 15 Yosef Segman from a city named Zichron Yaacov in Israel?

04:21:50 16 A. Yes.

04:21:51 17 Q. And that the assignee was Oplus Technologies?

04:21:51 18 A. Yes.

04:21:51 19 Q. So wouldn't it be safe to assume that Oplus  
04:21:51 20 Technologies would make -- do the hypothetical negotiation  
04:21:51 21 if it owned the patent at the time of the hypothetical  
04:22:00 22 negotiation?

04:22:00 23 MR. LEE: Objection, Your Honor. Relevance.

04:22:03 24 THE COURT: What's the relevance?

04:22:04 25 MR. OLIVER: Part of the Georgia-Pacific factors

04:22:06 1 are an assessment of the company's size and so on and --  
04:22:09 2 and, you know, various aspects about the company that owns  
04:22:12 3 the patent itself.

04:22:13 4 THE COURT: I'll allow it.

04:22:18 5 BY MR. OLIVER:

04:22:19 6 Q. So if Oplus Technologies owned the patent on  
04:22:23 7 March 13th, would the hypothetical negotiation need to be  
04:22:27 8 done based on their information?

04:22:29 9 A. What I'm not sure of is how patent law deals with the  
04:22:32 10 issue of successors, assignees, and all that. I don't know  
04:22:36 11 if you step into the shoes of previous owner. That's a  
04:22:39 12 legal issue that's beyond my expertise.

04:22:59 13 Q. You recognize this? I can put the whole slide up if  
04:23:03 14 you need it, but you recognize what I'm showing you from  
04:23:06 15 what you can see?

04:23:06 16 A. No, I can see it fine.

04:23:08 17 Q. You're prepared this slide, right?

04:23:12 18 A. Yes.

04:23:13 19 Q. And these are the legal factors, right, that go into  
04:23:16 20 the analysis?

04:23:17 21 A. Yes. Well, they're economic factors and legal factors  
04:23:23 22 both.

04:23:24 23 Q. Okay. And you said you're not aware of any legal  
04:23:26 24 factors that relate to who owns the patent?

04:23:29 25 A. Oh, no, no. What I said was I'm not aware of how

04:23:32 1 patent law treats successors, assignees, and all of that in  
04:23:37 2 the context of the hypothetical negotiation. That's a  
04:23:39 3 legal issue.

04:23:39 4 Q. But you consider that patent owner's licensing policy  
04:23:45 5 at the time of the hypothetical negotiation, right?

04:23:47 6 A. Yes. But I don't know if Lone Star essentially stepped  
04:23:52 7 into the shoes of Oplus. I'm not sure of how the patent  
04:23:56 8 law works with that.

04:23:57 9 Q. So you don't even know whether it's appropriate to  
04:24:00 10 consider Lone Star's licensing policy versus Oplus's  
04:24:04 11 licensing policy?

04:24:05 12 A. What I know is not appropriate is for me to opine on a  
04:24:09 13 legal issue.

04:24:09 14 Q. Okay. But if we assume that Oplus owned the patent in  
04:24:17 15 March 2013, it would have been incorrect to -- on No. 4, to  
04:24:25 16 consider Lone Star's licensing policy, right?

04:24:28 17 A. Well, I don't know. Again, I don't know how the law  
04:24:31 18 treats that issue.

04:24:35 19 Q. What is Factor No. 4?

04:24:37 20 A. It says: Lone Star's licensing policy related to the  
04:24:40 21 '435 patent.

04:24:40 22 Q. But if you looked at the Georgia-Pacific factors that  
04:24:43 23 relate to all cases, not just Lone Star, what would it --  
04:24:47 24 what would it be?

04:24:48 25 A. I'm sorry. I don't understand.

04:24:50 1 Q. Well, the Georgia-Pacific case from which you got these  
04:24:54 2 analyses --  
04:24:54 3 A. Right.  
04:24:55 4 Q. -- it didn't talk about Lone Star. What did it talk  
04:24:58 5 about?  
04:24:58 6 A. You mean at the time -- in 2013?  
04:25:02 7 Q. I mean, the legal --  
04:25:04 8 A. I'm lost.  
04:25:05 9 Q. Divorced from this lawsuit, divorced from Lone Star and  
04:25:09 10 ASUS, what does Georgia-Pacific say the factor is?  
04:25:13 11 A. It's the patent owner's licensing policy related to the  
04:25:17 12 '435.  
04:25:18 13 Q. And that's the policy that exists as of the date of the  
04:25:22 14 hypothetical negotiation?  
04:25:23 15 A. It is, but I don't know how law -- the law treats this  
04:25:28 16 issue of the successors or the assignee --  
04:25:32 17 Q. I'm just asking you about the factors that you  
04:25:33 18 purported to have analyzed. You analyzed a factor that had  
04:25:38 19 to do with a patent owner's licensing policy, right?  
04:25:41 20 A. Yeah. And let me get the actual word for you so that  
04:25:44 21 we're using the correct word here.  
04:25:47 22 Q. Thank you.  
04:26:18 23 A. So Factor 4 says: The licensor's established policy  
04:26:23 24 and marketing program to maintain his patent monopoly by  
04:26:27 25 not licensing others to use the invention or by granting

04:26:31 1 licensing under special conditions designed to preserve  
04:26:36 2 that monopoly.

04:26:37 3 So it says: The licensor.

04:26:38 4 Q. The licensor. And just from your understanding of  
04:26:42 5 licensor, not referencing one of the parties, what does the  
04:26:48 6 word "licensor" mean?

04:26:50 7 A. That's the person from whom the license is granted. It  
04:26:54 8 comes from the licensor and goes to the licensee.

04:26:58 9 Q. Okay. So the licensor would be the person who has the  
04:27:01 10 rights in the patent, who -- is that right?

04:27:04 11 A. Yes, that would have the rights to grant that license.

04:27:09 12 Q. And that would be the person that -- that -- I'm sorry.  
04:27:13 13 You just said -- the person who can grant the license,  
04:27:16 14 right?

04:27:17 15 A. Correct.

04:27:17 16 Q. And if Lone Star does not own a patent, is it able to  
04:27:23 17 grant a license to that patent?

04:27:25 18 A. It stepped into those shoes later in the construct of  
04:27:31 19 the hypothetical negotiation. I don't know that that's not  
04:27:33 20 okay.

04:27:33 21 Q. So if -- if I wanted to, I could grant a license right  
04:27:38 22 now to Lone Star's patent and then buy the patent later  
04:27:42 23 from Lone Star and it would be okay?

04:27:44 24 A. I don't know. There's a lot of magic with  
04:27:48 25 Georgia-Pacific because we're in this hypothetical world

04:27:50 1 where we're saying we're going to peer into the future and  
04:27:53 2 we're going to look back and we're going to say here's what  
04:27:57 3 would have happened under these conditions. So I don't  
04:27:59 4 know that there's not liberty to do exactly what we're  
04:28:02 5 talking about here within that construct.

04:28:04 6 Q. So to use your term, you applied a lot of magic in  
04:28:08 7 coming up with your number?

04:28:10 8 A. I'm using that term in reference to this hypothetical  
04:28:13 9 idea.

04:28:13 10 Q. Okay. Are there any other factors that relate to  
04:28:24 11 the -- the patent owner?

04:28:26 12 A. Well, a lot of them do, obviously. So the nature and  
04:28:35 13 the scope of the license, exclusive, the territories, all  
04:28:38 14 that, that's relating to the patent owner and the licensor  
04:28:42 15 and the licensee.

04:28:43 16 Q. Okay. So, for example, the commercial relationship of  
04:28:47 17 the parties?

04:28:47 18 A. Yes.

04:28:47 19 Q. What was the commercial relationship of Oplus and ASUS  
04:28:53 20 in March of 2013?

04:28:54 21 A. Well, at that point, Oplus would have been the patent  
04:28:58 22 owner, and ASUS could have been a -- a potential and  
04:29:05 23 alleged infringer.

04:29:06 24 Q. Or they could have had a joint venture, if we're  
04:29:13 25 speculating?

04:29:14 1 A. I don't know.

04:29:14 2 Q. You just don't know?

04:29:16 3 A. Now, I mean, in this construct of the hypothetical

04:29:18 4 negotiation, the patent owner would be the licensor and

04:29:22 5 ASUS would be the licensee.

04:29:23 6 Q. Okay. So if you take my representation that Lone Star

04:29:27 7 did not own the patent at the date of your hypothetical

04:29:32 8 negotiation, it was incorrect for you to consider the

04:29:35 9 relationship between Oplus -- or between Lone Star and

04:29:39 10 ASUS, right?

04:29:40 11 A. I don't know that it is.

04:29:41 12 Q. You should have considered the relationship between

04:29:46 13 Oplus and ASUS, right?

04:29:48 14 A. I don't know that that is right because I don't know

04:29:50 15 that Lone Star doesn't essentially get to step into the

04:29:54 16 shoes as a buyer or assignee of the patent.

04:30:00 17 THE COURT: Hold on just a moment. Is there an

04:30:02 18 objection?

04:30:02 19 MR. LEE: Yes, Your Honor. Asked and answered.

04:30:04 20 THE COURT: I think we have exhausted the point

04:30:08 21 here, Mr. Oliver.

04:30:09 22 MR. OLIVER: Okay.

04:30:10 23 BY MR. OLIVER:

04:30:11 24 Q. What other factors relate to the owner of the patent at

04:30:18 25 the time of the hypothetical negotiation?

04:30:19 1 A. Factor 1 relates to the licensor.

04:30:26 2 Q. Okay. On Factor 1, did you consider any royalties

04:30:32 3 received by Oplus?

04:30:33 4 A. No.

04:30:33 5 Q. You just limited your analysis to Lone Star?

04:30:36 6 A. Yes.

04:30:38 7 Q. Okay. And what other factors relate to the patent

04:30:46 8 owner?

04:30:47 9 A. We've already talked about 4. We've already talked

04:30:50 10 about 5. I think we've touched the major ones.

04:31:11 11 Q. Okay. Thank you.

04:31:13 12 MR. BENNETT: Your Honor, I'm sorry to barge in

04:31:18 13 like this, but our mic has gone dead.

04:31:21 14 THE COURT: Okay. Let's replace it.

04:31:24 15 MR. BENNETT: Sorry for the interruption,

04:31:32 16 Your Honor.

04:31:32 17 THE COURT: Please proceed.

04:31:34 18 BY MR. OLIVER:

04:31:35 19 Q. Okay. Mr. Perdue, let's move to a slightly different

04:31:37 20 topic, still within the realm of your report. Who are some

04:31:43 21 of the large monitor suppliers in the U.S.?

04:31:50 22 A. Well, we know about ASUS. We know about Acer. Those

04:31:56 23 are two that come to mind right off the top of my head.

04:32:00 24 Q. Dell?

04:32:01 25 A. Em-hmm. Yep, Dell.

04:32:05 1 Q. What about LG?

04:32:08 2 A. I know they sell televisions. I would -- makes sense

04:32:12 3 that they would sell monitors, but I'm not sure.

04:32:18 4 Q. Samsung?

04:32:21 5 A. Yeah, probably. And then Apple obviously sells

04:32:27 6 monitors.

04:32:28 7 Q. Okay. How many of those companies have licenses to

04:32:38 8 assert a patent?

04:32:39 9 A. Well, of the ones that we just rattled off, I know Acer

04:32:44 10 does.

04:32:44 11 Q. Okay. And you looked at all of Lone Star's patent

04:32:47 12 licenses, right?

04:32:48 13 A. No. There were two licenses that were entered into

04:32:52 14 after my report was submitted, and so that -- those aren't

04:32:56 15 mentioned in my report.

04:32:58 16 Q. Okay. But those don't include any of the companies we

04:33:01 17 just named?

04:33:02 18 A. No, they don't.

04:33:04 19 Q. Okay. And did we mention Sharp?

04:33:13 20 A. Yes.

04:33:13 21 Q. Okay. And then -- and do you recognize the document

04:33:15 22 I'm putting on the screen?

04:33:16 23 A. Yes.

04:33:17 24 Q. And that's one of your demonstratives, right?

04:33:19 25 A. Yes.

04:33:19 1 Q. And let me zoom in a little bit. That says: At the  
04:33:35 2 time of the agreement, Sharp represented that it had exited  
04:33:40 3 the market for the accused devices.

04:33:42 4 Did I read that correctly?

04:33:43 5 A. Yes.

04:33:51 6 Q. But in your -- you did a report in this case, right?

04:33:55 7 A. Yes.

04:33:55 8 Q. And in that report, you just said it exited the  
04:34:00 9 U.S. market, right?

04:34:01 10 A. I'll look at my report.

04:34:08 11 Q. Okay. Try Page 8.

04:34:10 12 A. Page 8?

04:34:27 13 Yes.

04:34:28 14 Q. So did Sharp exit the worldwide market or just the  
04:34:32 15 U.S. market?

04:34:32 16 A. What I understood was the U.S. market.

04:34:39 17 Q. Okay. And did it stop making TVs and monitors or did  
04:34:44 18 it just stop making the accused devices?

04:34:45 19 A. Not completely sure about that.

04:34:48 20 Q. Okay. Were you here when the witness testified about  
04:34:52 21 the ODMs that supply monitors to ASUS?

04:34:56 22 A. I don't believe so.

04:34:57 23 Q. Would it surprise you if one of the ODMs that supplies  
04:35:02 24 monitors to ASUS was Sharp?

04:35:05 25 A. Did you say ODM?

04:35:07 1 Q. I'm sorry. The -- we've been using the term through  
04:35:10 2 the trial. Original device manufacturer is abbreviated  
04:35:16 3 ODM. Are you familiar with that term?  
04:35:18 4 A. Okay. Yes.  
04:35:18 5 Q. Okay. So would it surprise you if the exhibit that we  
04:35:22 6 saw earlier in the trial indicated that Sharp supplied  
04:35:28 7 products to ASUS that are accused in this case?  
04:35:31 8 A. I don't know that it would or wouldn't. I'm not aware  
04:35:34 9 of that.  
04:35:39 10 Q. Okay. And those products that are accused have to come  
04:35:43 11 into the United States?  
04:35:44 12 A. I'm not sure.  
04:35:46 13 Q. Can accused products infringe a patent if they're not  
04:35:46 14 in the United States?  
04:35:46 15 MR. LEE: Your Honor?  
04:35:49 16 THE COURT: I'm sorry?  
04:35:49 17 MR. LEE: Calls for speculation, Your Honor.  
04:35:51 18 THE COURT: I think your mic -- press the -- press  
04:35:53 19 the button, hold it down until the green light comes on.  
04:35:57 20 Just one simple press. There you go.  
04:35:59 21 MR. LEE: Objection, Your Honor, calls for  
04:36:01 22 speculation.  
04:36:02 23 THE COURT: Okay. Can you rephrase the question  
04:36:04 24 to avoid the objection, please?  
04:36:06 25 MR. OLIVER: Okay.

04:36:08 1 BY MR. OLIVER:

04:36:09 2 Q. Can products infringe a United States patent if they  
04:36:12 3 don't enter the United States market?

04:36:14 4 A. It's a patent law question, but -- but I don't believe  
04:36:19 5 so.

04:36:19 6 Q. Okay. And so if Sharp sells products to Acer that come  
04:36:26 7 into the U.S., do you still consider that Sharp exited the  
04:36:32 8 U.S. market?

04:36:33 9 A. As a direct seller, it sounds like they exited the  
04:36:37 10 market, but under your -- what you just described, they are  
04:36:42 11 still -- they're in the market as a supplier to someone  
04:36:45 12 else that's actually the direct seller in the market.

04:36:52 13 Q. Okay. So the -- is it possible that Sharp is still  
04:37:02 14 supplying monitors but just not monitors that can be used  
04:37:05 15 with the accused method?

04:37:07 16 MR. LEE: Objection, Your Honor, calls for  
04:37:13 17 speculation.

04:37:13 18 THE COURT: I will sustain that objection.

04:37:15 19 BY MR. OLIVER:

04:37:15 20 Q. Did you ask anybody before you finished your report  
04:37:19 21 whether Sharp is still supplying monitors that come into  
04:37:22 22 the U.S.?

04:37:24 23 A. No.

04:37:24 24 Q. Did you ask anybody before your report whether Sharp is  
04:37:29 25 still supplying monitors that can use the method in the

04:37:32 1 '435 patent?

04:37:32 2 A. No.

04:37:33 3 Q. Okay. Do you know whether Sharp is still supplying

04:37:42 4 such monitors?

04:37:43 5 A. I do not.

04:37:44 6 Q. Okay. You reviewed Sharp's patent license with Lone

04:37:50 7 Star, right?

04:37:51 8 A. Yes.

04:37:51 9 Q. And in your understanding, is Sharp a U.S. company or

04:37:55 10 an international company or some other type of -- do you

04:37:58 11 know what type of company it is?

04:38:00 12 A. We -- we'd have to look at the license. I don't

04:38:03 13 remember. I remember we looked at a couple that had

04:38:07 14 U.S. subsidiaries and foreign parents.

04:38:09 15 Q. Okay. Does Sharp's -- in -- according to data you have

04:38:15 16 from that license and the data you reviewed, does Sharp

04:38:18 17 sell products outside of the United States?

04:38:21 18 A. I don't know. I believe Sharp is a multinational

04:38:25 19 company and that they do sell product outside of the United

04:38:28 20 States.

04:38:28 21 Q. Okay. And the Lone Star license to Sharp didn't just

04:38:32 22 include the '435 patent, right?

04:38:34 23 A. I believe there was another patent involved.

04:38:36 24 Q. And at least one, if not more, foreign patents, right?

04:38:43 25 A. The details I'm unaware of. I believe there were more

04:38:47 1 patents. That's all I really know.

04:38:49 2 Q. Okay. Would you have any reason to dispute that it

04:38:55 3 includes at least one foreign patent as you sit here?

04:38:59 4 A. Like I said, I don't know the specifics.

04:39:01 5 Q. Okay. But in your calculations that you did with

04:39:12 6 respect to Sharp, did you consider the volume of products,

04:39:17 7 the number of products that were sold?

04:39:19 8 A. I didn't -- I don't think I did a calculation with

04:39:22 9 respect to Sharp.

04:39:24 10 Q. Okay. So you testified earlier that -- I'm sorry. I'm

04:39:35 11 sorry. Were you here when Mr. Rice testified?

04:39:38 12 A. No, but I reviewed some of the transcript.

04:39:41 13 Q. Okay. Did you see the part where he testified about

04:39:44 14 who Lone Star licensed?

04:39:46 15 A. Yes, I vaguely remember it, and I remember him talking

04:39:51 16 about the three that we've talked about here today.

04:39:53 17 Q. Okay. And has Lone Star licensed NEC?

04:39:59 18 A. NEC, Sharp, and Acer were the three that I identified

04:40:04 19 in my report.

04:40:05 20 Q. Okay. Are you familiar with company named Barco?

04:40:08 21 A. Yes.

04:40:09 22 Q. Has Lone Star licensed Barco?

04:40:11 23 A. Yes.

04:40:11 24 Q. Where is Barco's headquarters?

04:40:15 25 A. I believe the Netherlands.

04:40:19 1 Q. I don't think that's right, but I'll represent to you  
04:40:22 2 that it's Belgium.

04:40:25 3 A. Somewhere in Europe.

04:40:27 4 Q. Does it say in the license agreement where they are?

04:40:29 5 A. I've not reviewed that license agreement.

04:40:32 6 Q. Okay. Has Lone Star licensed LG?

04:40:38 7 A. I don't believe so.

04:40:40 8 Q. Has Lone Star licensed Samsung?

04:40:44 9 A. Now, their -- Lone Star owns other patents. What I'm  
04:40:48 10 familiar with is the '435 patent. I'm unaware of some of  
04:40:51 11 the other patents that they may have, that they may have  
04:40:55 12 licensed to other parties. So I have limited knowledge  
04:40:57 13 here.

04:40:57 14 Q. Okay. Let's -- I'll just take a step back.

04:41:00 15 Has Lone Star licensed -- I'm sorry. It's late in  
04:41:05 16 the day for me. I'm getting a little tired.

04:41:10 17 Has Lone Star licensed LG under the '435 patent?

04:41:13 18 A. No, I don't believe so, under the '435. I'm unaware of  
04:41:18 19 that.

04:41:18 20 Q. Has Lone Star licensed Samsung under the '435 patent?

04:41:21 21 A. The only five I'm familiar with -- we'll make this  
04:41:24 22 easy -- are the three that we talked about earlier, plus  
04:41:28 23 Barco, plus Hisense. Those are the five that I'm aware  
04:41:31 24 of --

04:41:31 25 Q. Okay.

04:41:31 1 A. -- the '435 patent.

04:41:32 2 Q. So just to summarize, not Dell, not Apple, not any of  
04:41:43 3 the other companies we talked about?

04:41:45 4 A. Yeah, I told you the five that I'm aware of.

04:41:47 5 Q. Okay. You know whether Lone Star has sent letters or  
04:41:51 6 any other type of notice to any of those unlicensed  
04:41:54 7 companies alleging that they infringed the patent?

04:42:01 8 MR. LEE: Objection, relevance.

04:42:03 9 THE COURT: I'm sorry, what is the objection?

04:42:05 10 MR. LEE: Relevance, Your Honor.

04:42:07 11 THE COURT: How is that relevant?

04:42:08 12 MR. OLIVER: The companies' licensing policies are  
04:42:09 13 part of the Georgia-Pacific factors. So I'm attempting to  
04:42:13 14 determine whether they would try to license any of these  
04:42:16 15 companies.

04:42:19 16 THE COURT: All right. I'll allow that.

04:42:22 17 A. Well, I think the answer to that is pretty simple. I  
04:42:24 18 stated this in my direct. Their licensing policy is  
04:42:28 19 basically nonexclusive licenses, and they're generally paid  
04:42:32 20 in a lump sum. So they're in the business of licensing.

04:42:35 21 BY MR. OLIVER:

04:42:37 22 Q. Okay. Do you have any knowledge whether Lone Star has  
04:42:41 23 sent letters seeking licenses or giving notices of patent  
04:42:45 24 infringement to any of the non-licensed companies that  
04:42:48 25 we've mentioned?

04:42:50 1 A. The specific ones you've mentioned, I do not.

04:42:53 2 Q. Okay. Did you talk to Mr. Rice? Do you know

04:43:04 3 Mr. Rice?

04:43:04 4 A. I do.

04:43:05 5 Q. He's the gentleman at the far end of the Plaintiff's

04:43:08 6 table?

04:43:08 7 A. Yes.

04:43:09 8 Q. Did you talk to him at all to gather information before

04:43:11 9 you prepared your expert report?

04:43:13 10 A. Not prior to my report, no.

04:43:18 11 Q. Okay. I want to ask you about something that Mr. Rice

04:43:21 12 said when he testified.

04:43:22 13 He testified: Lone Star is essentially prevented

04:43:25 14 from getting compensation for the use of its patented

04:43:31 15 technology every time one of these products is sold with

04:43:35 16 respect -- that's the end of his testimony, but he was

04:43:38 17 testifying about ASUS's sales.

04:43:44 18 With respect to that testimony, I want to ask you,

04:43:47 19 he couldn't have told you that before you wrote your

04:43:50 20 report, right?

04:43:52 21 A. We didn't speak before I submitted my report.

04:43:55 22 Q. And so you couldn't have given that information to him

04:43:58 23 before you wrote the report?

04:44:00 24 A. The statement that you just read?

04:44:03 25 Q. Right.

04:44:04 1 A. No.

04:44:04 2 Q. Okay. Have you told him anything with respect to that

04:44:10 3 since you have been working for Lone Star?

04:44:12 4 A. No.

04:44:14 5 Q. Okay. Now, looking -- we looked at the -- a little bit

04:44:22 6 of information about the agreement that Acer had with Lone

04:44:28 7 Star?

04:44:28 8 A. Yes.

04:44:29 9 Q. And Acer paid Lone Star a lump sum payment, right?

04:44:33 10 A. Yes.

04:44:33 11 Q. And so I want you to assume a hypothetical where

04:44:39 12 there's a store, where there's an Acer licensed product and

04:44:43 13 then an ASUS accused product next to the Acer licensed

04:44:47 14 product?

04:44:47 15 A. Okay.

04:44:48 16 Q. Acer and ASUS, right?

04:44:53 17 A. Got it.

04:44:54 18 Q. And a customer goes in to buy a monitor and makes a

04:44:58 19 choice. Is that a fair hypothetical?

04:45:00 20 A. Yeah, so far.

04:45:03 21 Q. Okay. If the customer buys the Acer monitor, Lone Star

04:45:11 22 doesn't get a penny more for that sale of the Acer monitor,

04:45:15 23 right?

04:45:16 24 A. No, because it's all -- based on their license

04:45:19 25 agreement, you mean, it's a lump sum.

04:45:21 1 Q. Right.

04:45:23 2 A. Is that what you're talking about here?

04:45:26 3 Q. Right. You got to my next question ahead of me. Thank

04:45:30 4 you.

04:45:30 5 So the money that Acer paid is all that they ever

04:45:35 6 had to pay, right?

04:45:36 7 A. Yes.

04:45:37 8 Q. And they -- if Acer keeps selling monitors from their

04:45:41 9 license in 2020 until the patent expires in 2022, they

04:45:45 10 never pay Lone Star another cent, right?

04:45:49 11 A. That's my understanding, it's a paid-up lump sum

04:45:53 12 license.

04:45:53 13 Q. So how does -- if a -- if a user -- do you think it's

04:45:59 14 realistic in the real world that a person -- a consumer out

04:46:04 15 in a store would choose between an Acer monitor and an ASUS

04:46:08 16 monitor?

04:46:09 17 A. I believe they're direct competitors.

04:46:11 18 Q. So how would the choice of an ASUS monitor versus an

04:46:15 19 Acer monitor cause Lone Star to loose money?

04:46:26 20 A. There's not a license agreement in place.

04:46:29 21 Q. But if they buy the Acer product, they're not getting

04:46:32 22 any more money?

04:46:34 23 A. But they did get money.

04:46:36 24 Q. But they're not getting any more going forward, right?

04:46:40 25 A. They got it all at once.

04:46:42 1 Q. Okay. And if somebody buys a monitor from LG, Samsung,  
04:46:45 2 or Dell, Lone Star is not getting any -- any money for  
04:46:49 3 those sales, right?

04:46:50 4 A. No.

04:46:50 5 Q. Even if the product infringes the '435 patent, Lone  
04:46:54 6 Star is not getting paid, right?

04:46:56 7 A. Well, if there's infringement, there's lost revenue,  
04:47:01 8 but if there's not infringement, there's nothing lost.

04:47:04 9 Q. Okay. But you just said that Lone Star hasn't -- to  
04:47:09 10 your knowledge, Lone Star hasn't given notice to any of  
04:47:12 11 those companies of infringement. So without such notice,  
04:47:15 12 Lone Star is not really losing any money because they can't  
04:47:19 13 collect for damages, right?

04:47:20 14 A. Yeah, if there's no lawsuit that's been filed, you  
04:47:23 15 don't know if there's infringement. You don't know those  
04:47:25 16 things yet.

04:47:26 17 Q. Okay. So with that note, we've talked about several  
04:47:41 18 huge companies that sell monitors.

04:47:48 19 How is it that when ASUS sells a monitor, Lone  
04:47:51 20 Star is losing money if none of those other companies are  
04:47:57 21 having to pay Lone Star for selling their monitors?

04:47:57 22 A. Did you say Acer or ASUS?

04:47:59 23 Q. I'm sorry. ASUS.

04:48:01 24 A. Yeah.

04:48:03 25 Q. A-S-U-S.

04:48:03 1 A. Well, in that case, a lawsuit has been filed, and now  
04:48:07 2 there's an issue of infringement that's being decided in  
04:48:09 3 this proceeding.  
04:48:10 4 Q. That's the sole basis, though, right?  
04:48:13 5 A. That is -- that is the -- that is the basis for it.  
04:48:16 6 Q. Okay. And you said you have spoken to Mr. Rice since  
04:48:23 7 you filed your -- since you signed your expert report?  
04:48:28 8 A. Following the submission of my report.  
04:48:29 9 Q. Okay. Did the -- did you ask him why Samsung and LG  
04:48:33 10 and Apple and Dell and all those other companies haven't  
04:48:42 11 entered into a license agreement?  
04:48:42 12 A. I did not.  
04:48:43 13 Q. Okay. So when you obtained the royalty rate of 2.3  
04:48:57 14 that you testified about, you looked at 10 licenses to get  
04:49:01 15 to that, right?  
04:49:04 16 A. Looked at 18 things first, and I narrowed it down  
04:49:08 17 to 10.  
04:49:09 18 Q. Okay. And then 7 out of those 10 licenses are  
04:49:18 19 exclusive licenses, right?  
04:49:20 20 A. Yes.  
04:49:31 21 Q. Do you recognize the demonstrative -- this  
04:49:32 22 demonstrative?  
04:49:32 23 A. I do.  
04:49:33 24 Q. So -- so the -- you -- the yellow highlighted licenses  
04:49:40 25 are the exclusive licenses or --

04:49:44 1 A. No.

04:49:44 2 Q. No? Okay. Oh, I see. The column on the far right

04:49:49 3 says whether they're exclusive, right?

04:49:51 4 A. There you go.

04:49:51 5 Q. Okay. And in the demonstratives, you also showed

04:50:04 6 something about a picture of some beautiful Victorian

04:50:08 7 houses?

04:50:09 8 A. Yes. Full House houses.

04:50:17 9 Q. I tell you, I bet in San Francisco if one of those

04:50:22 10 houses burned down, you could still buy the lot it was on

04:50:25 11 for a million dollars, right?

04:50:30 12 A. Been using this -- I've been using this slide for a

04:50:32 13 long time.

04:50:32 14 Q. And you talked about a purchase price, which is a price

04:50:35 15 to own, right?

04:50:36 16 A. Yeah, that was the first thing we talked about was

04:50:37 17 those were basically purchase price.

04:50:37 18 Q. And that was for an exclusive license or a purchase of

04:50:40 19 a patent, right?

04:50:41 20 A. Well, that would be analogous to buying the patent

04:50:46 21 versus licensing the patent which is more of a price to

04:50:51 22 use.

04:50:51 23 Q. How does the law treat exclusive licenses of patents?

04:50:57 24 Does it treat it like a purchase or not?

04:51:00 25 A. I'm -- I'm not an attorney. I can't answer that.

04:51:03 1 Q. Okay. Okay. But in any event, are you treating a  
04:51:10 2 non-exclusive license more like the rental rate than the  
04:51:15 3 purchase price?

04:51:15 4 A. They're different -- they're different -- they're  
04:51:20 5 different things. So with -- with an IP license -- here's  
04:51:27 6 the difference. A house is a tangible piece of property.  
04:51:34 7 I guess you could sell the house and let multiple families  
04:51:38 8 in it, but generally you want just your family in the  
04:51:42 9 house. It would be a little bit awkward having multiple  
04:51:47 10 families in the house.

04:51:48 11 With the IP, it's an intangible asset. It's not a  
04:51:53 12 tangible asset. It can be licensed to multiple people at  
04:51:57 13 the same time without degrading its value. Multiple people  
04:52:00 14 can't drive a car at the same time. Multiple families in a  
04:52:04 15 house, those are all problematic. Those are tangibles.  
04:52:04 16 With intangibles, they can be licensed to multiple parties.

04:52:10 17 So that's the distinction that I'm making. The  
04:52:12 18 purchase versus the -- the price to purchase versus the  
04:52:15 19 price to use, those things are still analogous. But when  
04:52:19 20 you get into the exclusivity issue, it's different with IP.

04:52:24 21 Q. Kind of like making -- the difference between taking a  
04:52:28 22 taxi from the airport to your house versus taking a public  
04:52:32 23 bus from the airport to your house. You pay more for the  
04:52:36 24 exclusivity of the taxi than sitting next to everyone on  
04:52:38 25 the bus?

04:52:38 1 A. Yeah. That's -- I mean, that's the idea here is that  
04:52:40 2 the exclusive is generally considered to be worth more than  
04:52:43 3 the non-exclusive, so you want to adjust for that somehow.  
04:52:48 4 Q. Okay. And then in these exclusive licenses that you  
04:52:51 5 looked at, they all included patents?  
04:52:56 6 A. They included patents, and sometimes there were some  
04:53:00 7 other things included in there.  
04:53:01 8 Q. Things like know-how?  
04:53:03 9 A. Yes.  
04:53:03 10 Q. What is "know-how"?  
04:53:04 11 A. That's something that's stuck in someone's head that  
04:53:07 12 you might need their help to figure something out.  
04:53:11 13 Q. And some of them include assistance, right? Some of  
04:53:13 14 these exclusive licenses include assistance?  
04:53:17 15 A. It could, yeah.  
04:53:18 16 Q. And so this know-how and assistance, would it be fair  
04:53:28 17 to say that that's the licensing -- the company that's  
04:53:32 18 giving the license is also agreeing to help somebody  
04:53:37 19 implement the technology if they need it?  
04:53:39 20 A. That could be, yes.  
04:53:41 21 Q. And there's value to that, right?  
04:53:44 22 A. Yes.  
04:53:44 23 Q. Okay. And how did you discount the -- that value --  
04:53:51 24 how did you discount that value from the patents to get to  
04:53:56 25 the -- from the licenses to get to the value of the

04:53:58 1 patents?

04:53:59 2 A. I didn't. That's just part of the messiness of this

04:54:05 3 situation where you're going to have things involved in

04:54:08 4 real-world transactions. You don't have the perfect naked

04:54:11 5 license every time for comparables, and we certainly didn't

04:54:14 6 have it in this case.

04:54:15 7 Q. Okay. And -- but getting back to what you said we're

04:54:19 8 doing here, we're talking about a hypothetical negotiation,

04:54:30 9 right?

04:54:31 10 A. Yes.

04:54:31 11 Q. And that negotiation is just for a patent, right?

04:54:41 12 A. That's correct.

04:54:41 13 Q. And that doesn't include any know-how from Lone Star to

04:54:45 14 ASUS?

04:54:46 15 A. Yeah. This is just for the patent.

04:54:47 16 Q. And doesn't include any assistance from Lone Star to

04:54:51 17 ASUS, right?

04:54:52 18 A. No. This is just a patent license.

04:54:54 19 Q. So you're still keeping the value of know-how and

04:54:57 20 assistance in the licenses you're using as a basis for your

04:55:01 21 number, right?

04:55:02 22 A. Just like one of those houses on that hill, the six

04:55:05 23 houses. One might have a garage in back. One might have

04:55:09 24 new carpet. One might have new appliances. That's just

04:55:13 25 part of the messiness of it.

04:55:14 1 Q. Okay. And ASUS -- ASUS probably doesn't need  
04:55:17 2 assistance from Mr. Rice to implement its technology,  
04:55:21 3 right?  
04:55:21 4 A. I don't know that it would or wouldn't.  
04:55:23 5 Q. So ASUS -- well, the claim is by Lone Star that it has  
04:55:26 6 already implemented this technology, right?  
04:55:28 7 A. Yes, that's right.  
04:55:29 8 Q. So you want to include the value of know-how and  
04:55:39 9 assistance in what the jury -- you want the jury to tell  
04:55:44 10 ASUS to pay for something that includes the value of  
04:55:47 11 know-how and assistance even though that would not be  
04:55:50 12 included in the license from Lone Star?  
04:55:51 13 MR. LEE: Objection, Your Honor. Argumentative.  
04:55:55 14 THE COURT: Overruled.  
04:55:56 15 A. Yeah, that's just the messiness of this situation that  
04:55:59 16 we're in. A perfect world, those six houses that are all  
04:56:03 17 lined up those together, that's the perfect world. In this  
04:56:06 18 world where I started looking at very -- looking  
04:56:09 19 specifically for hue and saturation and all that. In a  
04:56:12 20 perfect world, I would have gotten these perfect naked  
04:56:16 21 patent licenses that dealt specifically with video  
04:56:20 22 adjustment technology. That's not the real world. There  
04:56:22 23 are no perfect comps. And this is what we encounter when  
04:56:26 24 we do this all the time.  
04:56:27 25 BY MR. OLIVER:

04:56:28 1 Q. But you remember you said you did a lot of magic,  
04:56:31 2 right, to get to your number?

04:56:33 3 A. I said Georgia-Pacific factor hypothetical negotiation  
04:56:36 4 is magic. I didn't say I did magic.

04:56:39 5 Q. Okay. And as a part of that magic, you could have  
04:56:43 6 discounted the licenses to cut out the know-how since you  
04:56:47 7 knew it wouldn't be something that would be part of the  
04:56:54 8 hypothetical negotiation, right?

04:56:55 9 A. When I took the 14 percent out that I isolated and  
04:56:59 10 the 2.3 percent out that I isolated, think about all that  
04:57:03 11 industry data that I looked at. My stuff was to the left,  
04:57:06 12 so I knew I was being reasonable and conservative in it.

04:57:10 13 Is it perfect? No, it never is.

04:57:12 14 Q. Okay. So to go to your hypothetical that you gave  
04:57:15 15 about the houses and so on, if I go out to rent a house and  
04:57:20 16 there's one that's for rent furnished and one that's  
04:57:26 17 unfurnished and I said, look, I want my own furniture in  
04:57:30 18 the house, I don't want your furniture, I want you to get  
04:57:34 19 rid of your furniture and discount it, you don't think that  
04:57:38 20 the owner, to compete with the other person, would discount  
04:57:42 21 the furniture and say, look, I'm not going to charge you  
04:57:45 22 for the furniture that's included in this rental?

04:57:47 23 A. Depends on how bad he wants the deal.

04:57:50 24 Q. But the owner could do that, right? They could  
04:57:52 25 discount it?

04:57:52 1 A. The owner could, and that's a real world messiness  
04:57:55 2 issue that we encounter.

04:57:55 3 Q. And you could have discounted that, but you just chose  
04:57:59 4 to keep it lumped in with what you think the jury should  
04:58:02 5 tell ASUS to pay?

04:58:03 6 A. When I looked at in the context of all those reasonable  
04:58:07 7 factors, it looked reasonable to me. Is it perfect? It's  
04:58:11 8 not perfect, but it is reasonable.

04:58:13 9 Q. How many of these licenses that you included in your --  
04:58:24 10 in your analysis were considered by Dr. Ducharme?

04:58:30 11 A. Well, I talked about that earlier. When I started  
04:58:35 12 doing the searching, I looked at some of the technical  
04:58:40 13 terms in the patent, and my plan was --

04:58:43 14 Q. Sir, can you just answer my question, please? If you  
04:58:46 15 need a chance to explain it later, I'm sure --

04:58:46 16 A. Oh, okay.

04:58:50 17 Q. -- Mr. Lee will ask you.

04:58:52 18 How many of the licenses that you considered were  
04:58:54 19 looked at by Dr. Ducharme?

04:58:55 20 A. None because he didn't need to because of the search  
04:58:59 21 results.

04:58:59 22 Q. Okay. And how many of the patents that appear on those  
04:59:04 23 licenses were looked at by Dr. Ducharme?

04:59:07 24 A. We just talked about -- well, none of the licenses and  
04:59:10 25 none of the patents. He didn't look at any of that.

04:59:14 1 Q. Okay. So you didn't seek any technical input from a  
04:59:21 2 technologist when considering whether the licenses that you  
04:59:25 3 looked at were comparable to the -- the Lone Star patent,  
04:59:35 4 right?  
04:59:35 5 A. Yeah, and I explained that earlier. I was going to,  
04:59:39 6 but there was just a dearth of information. I looked at it  
04:59:43 7 through the lens of economic comparability.  
04:59:44 8 Q. Okay. But you could have asked Dr. Ducharme to tell  
04:59:47 9 you whether the patents and the licenses were comparable to  
04:59:49 10 Lone Star's patent?  
04:59:51 11 A. It became unnecessary because there was no --  
04:59:54 12 Q. Sir, that's not the answer to my question. You could  
04:59:58 13 have asked him, right?  
04:59:59 14 A. It would have been useless, but I could have.  
05:00:02 15 Q. Okay. So you looked at -- you ultimately have ten  
05:00:07 16 licenses in your group of licenses that are comparable,  
05:00:10 17 right?  
05:00:11 18 A. Yes.  
05:00:12 19 Q. And all of the licensees in that group agreed to pay a  
05:00:19 20 running percentage of their sales, right?  
05:00:22 21 A. They're all running royalty rates. It's a percentage,  
05:00:27 22 that's right.  
05:00:27 23 Q. So maybe 2 percent of the revenue or 3 percent of the  
05:00:33 24 revenues or 0.5 percent of the revenue or something like  
05:00:36 25 that?

05:00:36 1 A. Yeah. They ranged from 2 to 15 percent after I  
05:00:40 2 excluded the 50 percenter.

05:00:41 3 Q. And after you excluded the 0.5 percent, right?

05:00:44 4 A. That was due to litigation, that's right.

05:00:47 5 Q. Okay. I want to ask you briefly about -- I think it  
05:01:05 6 was Philips. Let me make sure I have that name right.

05:01:07 7 MR. OLIVER: Should I move to a different topic,  
05:01:09 8 Your Honor, or would you prefer to --

05:01:10 9 THE COURT: Yes. Do you have any idea,

05:01:15 10 Mr. Oliver, how much longer you have on cross?

05:01:18 11 MR. OLIVER: I believe it will be a fair amount  
05:01:20 12 longer.

05:01:20 13 THE COURT: I would like to keep going. Let me  
05:01:22 14 ask the jury. It's close to 5:00. Would it create any  
05:01:26 15 scheduling matters or arrangements you-all made if we went  
05:01:30 16 a little bit later tonight, say to 5:30? None? Okay.

05:01:35 17 Good.

05:01:36 18 Mr. Oliver, you have until 5:30.

05:01:38 19 MR. OLIVER: Okay. I was going to say,  
05:01:40 20 Your Honor, for point of reference, I'm about halfway  
05:01:43 21 through my outline, but Mr. Joshi might beat me up tonight  
05:01:47 22 and tell me I'm done, so we'll see.

05:01:47 23 BY MR. OLIVER:

05:02:00 24 Q. You -- the Philips license that you discussed is in the  
05:02:07 25 first row of your -- your chart, right, No. 1 there?

05:02:13 1 A. Yes.

05:02:13 2 Q. And the rates in that -- that license were -- were --

05:02:19 3 had a decent range, right, or had a significant range? The

05:02:30 4 numbers you put up for the jury were \$0.05 to \$0.85 per

05:02:36 5 unit, right?

05:02:36 6 A. For the 16 -- that's the range for the 16 different

05:02:39 7 clusters, that's right.

05:02:40 8 Q. Okay. And what does that license relate to?

05:02:43 9 A. That license relates to the 16 clusters that Philips

05:02:47 10 identifies on its webpage for TV and set-top box

05:02:53 11 technologies.

05:02:54 12 Q. Okay. So TV technology is one of them. That's one

05:02:59 13 that I assume just about everybody in this room is familiar

05:03:02 14 with?

05:03:02 15 A. That's right.

05:03:03 16 Q. And you cut that out because you said it didn't have a

05:03:08 17 percentage, right?

05:03:09 18 A. No, I didn't cut it out. What I said was the bulk of

05:03:13 19 the licenses that I -- that I was able to obtain were

05:03:17 20 percentage royalties. That was better suited, so there was

05:03:20 21 more bulk of the analysis there. I ultimately used this

05:03:24 22 Philips data.

05:03:26 23 Q. Okay. You're an economist?

05:03:32 24 A. I'm a finance and accounting professional.

05:03:34 25 Q. Okay. And you're generally familiar with average

05:03:40 1 price -- products on the market could have an average  
05:03:44 2 price, there could be an average price for cars, there  
05:03:47 3 could be an average price for iPhones, there could be an  
05:03:54 4 average price for potato chips?

05:03:57 5 A. There can be an average for anything that has numbers  
05:04:01 6 associated with it.

05:04:02 7 Q. Okay. And what is the average price for a TV, would  
05:04:06 8 you say?

05:04:06 9 A. I don't know.

05:04:07 10 Q. What's the cheapest TV you've ever seen in the store  
05:04:12 11 now?

05:04:12 12 A. I mean, a television right now seems like it could  
05:04:16 13 range between 100 bucks and two or \$3,000.

05:04:21 14 Q. Okay. So if the television that was licensed here was  
05:04:27 15 \$100, what percentage would those royalty rates amount to?

05:04:30 16 A. Well, if you licensed all of it, it was \$4.12. So as a  
05:04:36 17 percentage of the \$100 TV, it would be 4.12 percent.

05:04:42 18 Q. Okay. How about if you just license the \$0.05  
05:04:45 19 technology?

05:04:45 20 A. The what?

05:04:46 21 Q. If you license the \$0.05 technology in the \$100 TV, how  
05:04:53 22 much -- what royalty rate would that be?

05:04:55 23 A. That would some sub .1 percent rate.

05:04:57 24 Q. Something way, way below 1 percent up to 4 percent,  
05:05:03 25 depending on which technology cluster you chose?

05:05:06 1 A. Yes.

05:05:06 2 Q. Okay. And if you licensed it for the \$2,000 TV you

05:05:12 3 mentioned, we're talking even if you paid the \$4, that

05:05:16 4 would be .4 percent; is that right -- or, no, .2 percent;

05:05:22 5 is that right?

05:05:22 6 A. Yeah, it would be a sub-1 percent rate.

05:05:26 7 Q. Less than 1 percent? Okay. So you actually could have

05:05:30 8 gotten a royalty rate for this Philips cluster of patents

05:05:36 9 but it would have been way, way lower than the royalty

05:05:39 10 rates you're talking about, right?

05:05:40 11 A. To do that would have been to engage in speculation

05:05:43 12 about the prices of televisions and all that. I

05:05:47 13 wouldn't -- I would not want to do that.

05:05:50 14 Q. Okay. But you could have found information about

05:05:55 15 average prices of televisions, right?

05:05:56 16 A. But that would have been a mistake.

05:05:58 17 Q. And we just have -- we have an example here that we

05:06:02 18 just discussed where maybe they're \$100, maybe they're

05:06:07 19 \$2,000, somewhere in that range, you could have applied and

05:06:10 20 said there's a range of rates from way, way, way, way

05:06:13 21 below 1 percent to somewhere not quite 1 percent, right?

05:06:16 22 A. I could have, but that would have been a mistake.

05:06:21 23 Q. Okay. And then ultimately you said that this Philips

05:06:24 24 license was closely related in some ways to the -- to what

05:06:30 25 we're talking about here, right?

05:06:32 1 A. Televisions. Yeah, it's closely related.

05:06:36 2 Q. Okay. This license -- this agreement, this licensing

05:06:38 3 that has way less than 1 percent when you look at the

05:06:41 4 actual values of the TVs?

05:06:44 5 A. I don't know that you can say that because, again,

05:06:47 6 we're playing with this hypothetical of 100 to 2,000.

05:06:50 7 That's not very helpful. This is helpful when you see it

05:06:55 8 at these per-unit rates. This is helpful.

05:06:58 9 Q. Okay. So I'm not sure if I've asked this. I'm sorry

05:07:10 10 if I've already asked it, but Lone Star never has gotten a

05:07:13 11 percentage running royalty in any of its licenses, right?

05:07:20 12 A. They're all lump sum payments.

05:07:22 13 Q. Okay. So why were you -- but yet you were very

05:07:26 14 concerned that you wanted something with a running royalty

05:07:28 15 to analyze here?

05:07:30 16 A. I wasn't concerned. I followed the data, and the bulk

05:07:34 17 of the data had a percentage rate. So I wanted to make the

05:07:37 18 best use of the data that I had.

05:07:38 19 Q. And you didn't find any lump sum licenses in your -- in

05:07:42 20 your research?

05:07:43 21 A. No, because these are market rates where there's an

05:07:46 22 ongoing royalty being paid.

05:07:48 23 Q. But you actually saw some licenses from ASUS that were

05:07:52 24 lump sums, right?

05:07:53 25 A. Both, ASUS and Lone Star had lump sum --

05:07:53 1 Q. Okay.

05:07:57 2 A. -- licenses.

05:07:58 3 Q. And the licenses that ASUS has paid were pretty small

05:08:02 4 numbers, right?

05:08:03 5 A. Yes.

05:08:04 6 Q. Like extremely small numbers, right?

05:08:08 7 A. Of the licenses that were produced, they were very

05:08:12 8 small numbers.

05:08:13 9 Q. Okay. And those were lump sums?

05:08:15 10 A. I believe so.

05:08:16 11 Q. And there were no licenses that you've seen that ASUS

05:08:18 12 has produced with a running royalty, right?

05:08:20 13 A. No, I have not.

05:08:21 14 Q. We've talked about a lot of elements around the 10

05:08:31 15 licenses you chose, and how the situation might be

05:08:36 16 different from what we're facing here, but yet the only

05:08:41 17 adjustment you did was to reduce the royalty rate by

05:08:45 18 35 percent?

05:08:47 19 A. No. I went through a selection process, first of all.

05:08:52 20 I got rid of things that didn't look like they fit, did do

05:08:57 21 a 35 percent rate, and I used a median. Then I did all

05:09:01 22 those comparisons that I talked about with Mr. Lee to make

05:09:04 23 sure that they were reasonable.

05:09:12 24 Q. And you said that the data that you looked at had a lot

05:09:15 25 of licenses that went from exclusive to non-exclusive that

05:09:20 1 had 50 percent productions?

05:09:22 2 A. The Varner Study cited a 50 percent reduction in that  
05:09:28 3 very narrow -- with that very narrow fact pattern.

05:09:32 4 Q. Okay. In fact, what -- isn't it true that about --  
05:09:38 5 about almost 70 percent or two-thirds of the licenses in  
05:09:42 6 that study had a 50 percent reduction?

05:09:45 7 A. Two-thirds.

05:09:46 8 Q. Okay. And we talked a little bit earlier about --  
05:09:53 9 where are we? I'm going to show a different part of your  
05:10:02 10 slide.

05:10:02 11 Do you recall we talked a little bit earlier about  
05:10:05 12 this bottom where you said it was a median and not an  
05:10:08 13 average.

05:10:08 14 A. Yes.

05:10:08 15 Q. What's a "median"?

05:10:09 16 A. It's a middle observation.

05:10:12 17 Q. Okay. So half of the rates are higher, and half of the  
05:10:18 18 rates are lower than the median?

05:10:20 19 A. That's right.

05:10:21 20 Q. And in the Varner Study, where would the median  
05:10:29 21 reduction be? Two-thirds of the licenses were 50 percent  
05:10:34 22 reductions, right?

05:10:35 23 A. That's right. The median would probably be 50 percent  
05:10:41 24 given that that many of the licenses were citing the  
05:10:44 25 50 percent right, that's right.

05:10:47 1 Q. So you want to jury to take the median here, but in the  
05:10:50 2 other factor, you want the jury to take a much lower  
05:10:53 3 reduction than the median? Only reduce it a little, not  
05:10:56 4 the full 50 percent?

05:10:58 5 A. And I explained why.

05:10:59 6 Q. But that's what you're asking, right, take two  
05:11:03 7 different -- take the median in one situation and don't  
05:11:05 8 take the median in the other situation?

05:11:07 9 A. No, the number I cited was in between the two data  
05:11:11 10 points.

05:11:12 11 Q. Okay. If the jury took the median reduction for --  
05:11:14 12 from exclusive licenses to non-exclusive licenses from  
05:11:19 13 Varner --

05:11:19 14 A. Yeah.

05:11:21 15 Q. -- they would reduce it by 50 percent, right?

05:11:23 16 A. But then that would be ignoring the --

05:11:25 17 Q. Sir? Sir? Sir, that's not my question. If they took  
05:11:28 18 the median point from the Varner Study, they would reduce  
05:11:32 19 it by 50 percent, right?

05:11:34 20 A. That's correct.

05:11:34 21 Q. And you only reduced it by 35 percent?

05:11:37 22 A. And I explained why in my direct, yes.

05:11:39 23 Q. So was the information in Mr. Varner's study public or  
05:12:07 24 private information?

05:12:07 25 A. It was a paper.

05:12:08 1 Q. But the licenses he considered, were those publicly  
05:12:11 2 available or private?

05:12:12 3 A. No, he got them from public company disclosures.

05:12:17 4 Q. Okay. So the licenses themselves were actually  
05:12:26 5 publicly available?

05:12:27 6 A. They were disclosed in public SEC filings.

05:12:31 7 Q. The actual licenses?

05:12:33 8 A. Or references to the licenses. I'm not sure if it was  
05:12:37 9 the entire license agreement or not, but there was some  
05:12:40 10 reference to it at a minimum.

05:12:42 11 Q. And there was a -- so you're sure there were at least  
05:12:44 12 references to it? You're not sure that all these licenses  
05:12:47 13 were public, right?

05:12:48 14 A. That's correct.

05:12:49 15 Q. But there was at least one public license, right,  
05:12:52 16 from -- to DuPont?

05:12:54 17 A. Well, the DuPont thing was cited in a -- in a paper,  
05:12:58 18 and it was cited in the treatise that I use in my book. So  
05:13:05 19 that's how I know about the DuPont amount.

05:13:06 20 Q. So that's the public data we have. That's  
05:13:10 21 the 27 percent number?

05:13:10 22 A. Yes. And it's public in that it's published, and maybe  
05:13:15 23 that's what you mean.

05:13:16 24 Q. Publicly available.

05:13:16 25 A. Yes.

05:13:18 1 Q. The document is publicly available.

05:13:19 2 A. Well, I don't know that the document is, but I know

05:13:23 3 that the paper that talks about it and the treatise that I

05:13:25 4 got it from are publicly available.

05:13:27 5 Q. Okay. And that study was done in 2011, right?

05:13:41 6 A. The Varner Study? 2011, yes.

05:14:06 7 Q. Did you have a chart with that data in your

05:14:23 8 demonstratives or not?

05:14:24 9 A. No.

05:14:25 10 Q. Okay. And so the low point in that -- the lowest

05:14:32 11 reduction to an exclusive license was 27 percent, right?

05:14:37 12 A. Yeah, two data points, 27 percent and 50 percent.

05:14:43 13 Q. Right. And that 27 percent was a -- the license to

05:14:48 14 DuPont?

05:14:49 15 A. That was the DuPont renegotiated license, that's right.

05:14:52 16 Q. Do you recall the date of that license?

05:14:54 17 A. I don't. You want me to look it up?

05:14:57 18 Q. I just want to -- let's see if we can get to a

05:15:01 19 generality here. That was a really old license, right?

05:15:05 20 A. I don't know. I'd have to look it up.

05:15:07 21 Q. Okay. You don't need to look it up right now.

05:15:10 22 A. Okay.

05:15:15 23 Q. You read Mr. Reed's report, though?

05:15:18 24 A. Yes.

05:15:18 25 Q. And in his report, he suggested that that was a really

05:15:21 1 old license, right?

05:15:23 2 A. In his report, he expect -- he says, go to the extreme

05:15:26 3 and use 50 percent. That's what he suggests in his report.

05:15:29 4 Q. And by extreme, you mean the median, right, the

05:15:33 5 50-percent median?

05:15:35 6 A. The high number.

05:15:35 7 Q. The high number is 50 percent, right?

05:15:38 8 A. The high number is 50 percent. I did something in the

05:15:41 9 middle.

05:15:42 10 Q. So if we look at what you've got here, when you're

05:15:50 11 looking at this type of thing, you kind of look at

05:15:53 12 different chunks of data and statistics, right? You look

05:15:58 13 at -- oh, froze it, okay.

05:15:59 14 You look at a high number, right?

05:16:02 15 A. Yes.

05:16:03 16 Q. And then a 75th percentile, right?

05:16:08 17 A. Yes.

05:16:08 18 Q. And a median, right? And then you get into the low

05:16:12 19 numbers, right?

05:16:12 20 A. Yes.

05:16:13 21 Q. And so the high reduction would be -- in the Varner

05:16:19 22 Study would be 50 percent, right?

05:16:20 23 A. Yes.

05:16:21 24 Q. The 75th percentile would be a 50-percent reduction,

05:16:25 25 right?

05:16:26 1 A. In the Varner Study?

05:16:27 2 Q. Because two-thirds of the licenses were 50 percent?

05:16:30 3 A. Two-thirds is 66 percent. So 75th percentile would be

05:16:37 4 above that. If -- we don't know -- we don't know where the

05:16:39 5 or third is. We don't know if they're higher or lower. So

05:16:42 6 we don't understand where that two-thirds is in the

05:16:45 7 ranking.

05:16:45 8 Q. Okay. So there could actually even be greater

05:16:50 9 reductions than 50 percent?

05:16:51 10 A. We don't know because in that snippet that I used, some

05:16:55 11 could be higher, some could be lower.

05:16:58 12 Q. Okay. And so the lowest possible reduction of

05:17:02 13 the 75th percentile would be a 50 percent reduction, right?

05:17:05 14 A. No, because if the two-thirds were moved towards the

05:17:10 15 bottom, then the 75th percentile number could be -- could

05:17:16 16 be a different number than the 50 percent.

05:17:18 17 Q. It could be higher than 50 percent?

05:17:20 18 A. Could be higher.

05:17:22 19 Q. So what I said was the lowest possible reduction was

05:17:27 20 50 percent for the 75th percentile?

05:17:27 21 A. Based on Varner.

05:17:31 22 Q. Right. And the lowest possible median number would

05:17:34 23 be -- actually, the only possible median number would be a

05:17:37 24 50 percent reduction in the license rates, right?

05:17:39 25 A. That's probably true, given the way that data would

05:17:41 1 work, yes.

05:17:43 2 Q. Okay. And yet -- well, you chose the median in one

05:17:51 3 spot, you chose the lowest possible reduction rate to get

05:17:55 4 the highest possible value from the Varner Study?

05:17:57 5 A. In both cases, I chose something in the middle, in both

05:18:02 6 cases.

05:18:02 7 Q. The 27 per -- okay. Okay, I'm sorry. You didn't

05:18:05 8 choose the 27 percent. You increased it a little bit?

05:18:08 9 A. In both cases, I chose something in the middle.

05:18:10 10 Q. You went pretty far away from the 50 percent that's the

05:18:13 11 median, the high of the 75th percentile, right?

05:18:13 12 A. That's one data point.

05:18:15 13 Q. That's what you based your reduction on?

05:18:18 14 A. It was one data point.

05:18:38 15 Q. You considered a bunch of ASUS monitor revenue in

05:18:43 16 reaching your final number, right?

05:18:45 17 A. Everything that was produced in the documents we looked

05:18:48 18 at earlier.

05:18:49 19 Q. And then you took a chunk of that value, and you called

05:18:55 20 that apportioning it, right?

05:19:00 21 A. Yes.

05:19:00 22 Q. And so I put your other -- your Introduction to

05:19:06 23 Apportionment slide up.

05:19:09 24 We see that you've -- PacMan plus what PacMan is

05:19:16 25 eating is the entire profit to ASUS; is that right?

05:19:25 1 A. What this represents here is of the Philips' licenses,  
05:19:29 2 that was the 14 percent, and I'm saying that that's a proxy  
05:19:34 3 for this apportionment factor for ASUS.

05:19:38 4 Q. Okay. And that apportionment factor, that's supposed  
05:19:46 5 to represent how much value the patent adds to the product,  
05:19:52 6 right?

05:19:53 7 A. No.

05:19:54 8 Q. What -- what does it represent in your mind?

05:19:58 9 A. It represents the appropriate bundle of technology that  
05:20:01 10 you would apply the royalty rate to, and the '435 patent  
05:20:06 11 would be one of several technical capabilities within that  
05:20:11 12 bundle.

05:20:12 13                   Imagine a hard drive. If you've got a computer  
05:20:17 14 and you've got a hard drive and you've got a motherboard,  
05:20:21 15 it's the idea of this smaller unit that you would apply the  
05:20:24 16 royalty rate to. The royalty rate is what isolates the  
05:20:27 17 value of the patent.

05:20:27 18 Q. Okay. So if I -- I look at one of the ASUS products,  
05:20:37 19 there's -- some of the value is in the base and some of the  
05:20:40 20 value is in this little thing that twists --

05:20:40 21 A. Yep.

05:20:43 22 Q. -- and some of the value might be in the technology  
05:20:45 23 that allows you to screw it onto the stand. There would be  
05:20:50 24 value in the stand, right?

05:20:52 25 A. I say all that in my report, that's right.

05:20:55 1 Q. And there would be value in the thing that -- that you  
05:20:58 2 push up and down, right?  
05:20:59 3 A. Yep.  
05:21:00 4 Q. And then, what do you think, it would be fair to  
05:21:04 5 characterize that most of the value is found in the actual  
05:21:08 6 screen itself, not all the accessories?  
05:21:10 7 A. I think most of the value in an electronic display  
05:21:14 8 device is in the electronic display components, in general,  
05:21:18 9 of which video adjustment and control would be a subset.  
05:21:21 10 Q. Okay. But -- that's right. Okay. So we're saying  
05:21:28 11 most of the value is probably in the screen. Did you  
05:21:32 12 consider -- did you consider how much the cost of the  
05:21:35 13 different components were in reaching your apportionment?  
05:21:41 14 A. Well, first of all, I didn't say most of the value is  
05:21:44 15 in the screen. You did.  
05:21:45 16 All I said was that there were these various  
05:21:50 17 bundles of other sources of value and that I'm trying to  
05:21:53 18 isolate out video adjustment and control --  
05:21:53 19 Q. Okay.  
05:21:56 20 A. -- from this big bundle.  
05:21:57 21 Q. So that's about one-seventh of the total value of  
05:22:05 22 the -- of the technology, right?  
05:22:07 23 A. 14 percent.  
05:22:07 24 Q. And you're assuming one-seventh of it to what you would  
05:22:15 25 call video control?

05:22:17 1 A. Video adjustment and control --

05:22:17 2 Q. Video adjustment and control --

05:22:18 3 A. -- is just a big bundle.

05:22:21 4 Q. And that includes all of the adjustment options in the

05:22:24 5 on-screen menu on these -- in these products?

05:22:27 6 A. It's exactly what it says. Video adjustment and

05:22:30 7 control is the bundle that I'm saying is reasonable to

05:22:33 8 consider here, and the color-changing technology would be a

05:22:35 9 part of that bundle.

05:22:36 10 Q. Okay. And -- but this patent only relates to one

05:22:47 11 specific menu option in this product, right?

05:22:52 12 A. I don't know. That's a technical issue.

05:22:59 13 Q. Didn't you consider that when you were considering how

05:23:02 14 much the technology was worth?

05:23:03 15 A. No. I understand that there was a calibration and

05:23:09 16 adjustment capability in it. That's what the royalty rate

05:23:11 17 is there for, to isolate that piece.

05:23:12 18 Q. Okay. So you did not apportion the value of the

05:23:18 19 technology specifically that's accused of infringement.

05:23:22 20 Rather, you apportioned the entirety of all the video

05:23:28 21 adjustment and control technology, right?

05:23:31 22 MR. LEE: Objection, Your Honor. Asked and

05:23:32 23 answered.

05:23:36 24 MR. OLIVER: I haven't asked that question.

05:23:40 25 THE COURT: Overruled.

05:23:42 1 A. Video adjustment and control technology was the bundle  
05:23:44 2 I considered to be appropriate for this, and I found a rate  
05:23:47 3 that I thought was a reasonable proxy. I look at color  
05:23:51 4 adjustment as one of the parts of that bundle. The royalty  
05:23:55 5 rate is what attaches to that specific value.

05:23:57 6 BY MR. OLIVER:

05:23:57 7 Q. But could you have broken out in any way -- would there  
05:24:01 8 have been any way within the magic of the Georgia-Pacific  
05:24:04 9 analysis to break out the value of the specific technology  
05:24:07 10 we're talking about?

05:24:08 11 A. Not based upon what I considered to be the best  
05:24:11 12 available data, which is what I have used. This was the  
05:24:16 13 best and I think a reasonable way to do it.

05:24:18 14 Q. Okay. And in these monitors, when somebody hits the  
05:24:24 15 buttons on the bottom or the back or the side to bring up  
05:24:27 16 the On-Screen-Display menu, how many menu items are there?

05:24:34 17 A. I'm not sure. I've actually adjusted my color, so I  
05:24:34 18 have seen that.

05:24:34 19 Q. Okay.

05:24:38 20 A. But I don't know many menu items.

05:24:39 21 Q. What type of monitor do you have?

05:24:42 22 A. It's an ASUS monitor.

05:24:43 23 Q. And you adjusted it when you were working on this case?

05:24:50 24 A. No, before.

05:24:50 25 Q. Okay. How many -- just to be clear, is your monitor

05:24:55 1 one of the accused products?

05:24:57 2 A. I'm not sure.

05:24:58 3 Q. Okay. When you did adjust that on that monitor, how

05:25:06 4 many different options were in the menu that you saw?

05:25:10 5 A. That was a long time ago. I don't remember.

05:25:12 6 Q. Do you think there's more options than just the

05:25:16 7 technology there is available -- do you think that there

05:25:19 8 are more adjustment options in these monitors than the

05:25:22 9 technology that's at issue in this lawsuit?

05:25:24 10 A. There were several things when I went to the on-screen

05:25:27 11 adjustment. I don't remember what they were or how many

05:25:29 12 there were.

05:25:30 13 Q. Okay. So what we're talking about, then, if that holds

05:25:36 14 true with these monitors, is a much smaller piece of the

05:25:41 15 overall video adjustment and control technology, right?

05:25:44 16 A. It's a subset of that video adjustment and control.

05:25:48 17 And the easy math is it's three-tenths of 1 percent of the

05:25:53 18 overall, so it's a sub-1 percent rate on an effective

05:26:01 19 basis.

05:26:01 20 Q. Okay. I'm not sure I understand what you just said,

05:26:04 21 but I think you answered my question. Did you answer my

05:26:08 22 question that it was a smaller --

05:26:08 23 A. I thought I did.

05:26:10 24 Q. Okay.

05:26:11 25 A. I thought so.

05:26:12 1 Q. So you didn't actually look at the adjustment  
05:26:30 2 technology in any of the accused monitors to see how many  
05:26:35 3 different adjustments there were before apportioning  
05:26:38 4 14 percent of the value to the one feature we're talking  
05:26:41 5 about, right?  
05:26:42 6 A. That mischaracterizes what I did. I didn't apportion  
05:26:46 7 14 percent to the one feature. I apportioned 14 percent to  
05:26:50 8 this bigger bundle. Then I applied the 2.3 percent rate to  
05:26:54 9 that. On an overall basis, it's three-tenths of 1 percent.  
05:27:02 10 Q. Okay. So does that apportionment apply to -- equally  
05:27:11 11 to different monitors, despite the usage of the monitor?  
05:27:15 12 A. This was done across the board.  
05:27:17 13 Q. So if we have a monitor that's made for a gamer -- I'm  
05:27:27 14 going to hold up a box here. It's a little awkward. You  
05:27:31 15 see this? This is one of the accused products, right?  
05:27:34 16 A. Yes.  
05:27:35 17 Q. And that says tough -- tough gaming, right?  
05:27:41 18 A. Yes.  
05:27:41 19 Q. And did you consider whether gamers need the color --  
05:27:50 20 use the color adjustment technology?  
05:27:52 21 A. I didn't go to that level of detail. I did this at a  
05:27:56 22 very high level.  
05:27:57 23 Q. So if we have -- if we have a monitor for gamers and it  
05:28:01 24 costs \$600, you're still apportioning the same amount to  
05:28:12 25 that \$600 monitor?

05:28:14 1 A. This was the -- based on the best available evidence,  
05:28:17 2 it had to be done at a high level like this, and I've not  
05:28:21 3 seen any better evidence or approach.

05:28:23 4 Q. But that wasn't my question. My question is, if we've  
05:28:26 5 got a monitor for gamers who are -- who may or may not ever  
05:28:31 6 use adjustment technology, you're still apportioning the  
05:28:35 7 same amount to that monitor?

05:28:38 8 A. I think I said this earlier. I did it at an overall  
05:28:43 9 level. Everything was treated equally on that.

05:28:45 10 Q. And that holds true for the Professional Artist models,  
05:28:48 11 as well, right?

05:28:49 12 A. That is included in everything.

05:28:50 13 Q. Okay. And so precision color adjustment technology in  
05:28:57 14 your apportionment had the exact same value to a gamer as  
05:29:03 15 to a business person as to a home user as to a gamer as to  
05:29:07 16 any user of this technology, right?

05:29:09 17 A. I didn't make that leap.

05:29:10 18 Q. But you could have, right, because you had -- you knew  
05:29:14 19 the different categories of products?

05:29:17 20 A. There's not that much precision in the data. There's  
05:29:23 21 just not. The data is messier than that.

05:29:26 22 Q. Okay. Did you consider whether ASUS advertised  
05:29:35 23 the 6-axis technology for any particular products when you  
05:29:39 24 made your apportionment adjustment?

05:29:41 25 A. Well, I know I considered in my Georgia-Pacific

05:29:44 1 factors -- I know I put a screenshot in my report of one of  
05:29:48 2 the monitors, and I think it was either the ProArt or a  
05:29:51 3 gaming monitor. So I did consider that, and I did discuss  
05:29:53 4 that with Dr. Ducharme.

05:29:55 5 Q. Okay. And was that advertising important to your  
05:30:00 6 apportionment?

05:30:00 7 A. Well, at the end of that particular Georgia-Pacific  
05:30:03 8 factor, I said that it could exert upward pressure on a  
05:30:07 9 rate, but I ended up not moving the rate because of that  
05:30:11 10 upward pressure.

05:30:11 11 Q. Okay. And if a feature is not advertised, could it  
05:30:20 12 exert downward pressure on a rate?

05:30:23 13 A. Just because it's not advertised doesn't mean it's not  
05:30:27 14 important.

05:30:27 15 Q. So companies put important features in products but  
05:30:32 16 don't advertise them?

05:30:32 17 A. They might. They might just say we're going to promote  
05:30:36 18 the top three things, but ten things might be important to  
05:30:41 19 a consumer.

05:30:41 20 Q. And that would be relevant to your analysis, right?

05:30:43 21 A. No, again, that's a level of precision that's not  
05:30:46 22 applicable here.

05:30:47 23 Q. Okay. But you did consider it with respect to some  
05:30:49 24 products where you considered whether they advertise  
05:30:53 25 6-axis?

05:30:54 1 A. Again, I said that there was those two rates that I  
05:30:57 2 said could have exerted upward pressure, but I ended up not  
05:31:02 3 changing my rate at all because of it, so I didn't even  
05:31:05 4 apply the upward pressure to my rate. I kept it where it  
05:31:08 5 was.

05:31:08 6 Q. Okay. I understand that, but my question is you  
05:31:13 7 considered it in one instance, right? You considered the  
05:31:16 8 advertising of a specific feature in one instance, right?

05:31:20 9 A. I highlighted it, and then didn't use it.

05:31:22 10 Q. Okay. And then -- but you didn't consider the lack of  
05:31:30 11 advertising on the other hand?

05:31:32 12 A. And I wouldn't have used it either. I would have  
05:31:34 13 treated it the exact same way. That's my point.

05:31:35 14 Q. Isn't it pretty common that if a company has a feature  
05:31:39 15 that's important in a product, they advertise it?

05:31:40 16 A. Yeah. But, you know, there's only so much mind space  
05:31:43 17 that a consumer has. If you give out a list of 100  
05:31:48 18 attributes of a product, you're going to get lost in the  
05:31:52 19 shuffle, so they tend to focus on top attributes.

05:32:10 20 Q. We talked about the Philips licensing program that you  
05:32:13 21 pulled some data from, right?

05:32:15 22 A. Yes.

05:32:23 23 Q. There's a couple of pen marks and highlights on this,  
05:32:26 24 but absent the pen marks and absent the highlighting that's  
05:32:32 25 what you displayed for us, right?

05:32:34 1 A. Yes.

05:32:34 2 Q. And this is a table of Philips set-top licensing rates,

05:32:38 3 right?

05:32:38 4 A. Yes.

05:32:39 5 Q. And you chose the 14 percent apportionment based on the

05:32:43 6 highlighted line there?

05:32:44 7 A. Yes.

05:32:47 8 Q. And basically, other than advertising, which was at a

05:32:56 9 higher rate, you basically chose the second highest rate on

05:33:00 10 the table, right?

05:33:01 11 A. Yeah. But that wasn't the reason I selected it, but it

05:33:04 12 is the second highest rate on the table, yes.

05:33:07 13 Q. Okay. And you weren't here for Dr. Ducharme's

05:33:09 14 testimony?

05:33:10 15 A. Tail end of it.

05:33:11 16 Q. Did you hear any testimony about software?

05:33:14 17 A. Very little, but I -- yes.

05:33:17 18 Q. But you did hear that he testified about the software

05:33:20 19 in these products?

05:33:21 20 A. I heard -- I heard a little bit about software, yes.

05:33:26 21 Q. And that's software that he testified that if it's in

05:33:32 22 the product, it's essentially an upgrade over a product

05:33:36 23 without the same software, right?

05:33:38 24 A. I wasn't paying that close of attention to it.

05:33:41 25 Q. He didn't say that. What I'm saying is if you upgrade

05:33:45 1 a premium product to the patented technology by adding  
05:33:47 2 software to it, that would a software upgrade, right?  
05:33:53 3 A. Can you restate the question, please?  
05:33:55 4 Q. Assume you have an ASUS product that does not  
05:33:59 5 have 6-axis technology in it.  
05:34:00 6 A. Okay.  
05:34:00 7 Q. And you added -- so if you were able to add software to  
05:34:04 8 add that 6-axis technology, that would be a software  
05:34:09 9 upgrade, right?  
05:34:11 10 A. Potentially, but it would also have to be supported by  
05:34:15 11 the hardware, too.  
05:34:16 12 Q. Right. And so there's a rate here for software  
05:34:20 13 upgrades, right?  
05:34:22 14 A. Yeah.  
05:34:23 15 Q. 0 percent?  
05:34:23 16 A. Yeah.  
05:34:24 17 Q. So Philips doesn't charge anything for when there's a  
05:34:27 18 software upgrade within their patent portfolio, right?  
05:34:31 19 A. Based upon this -- well, they do in the EU.  
05:34:37 20 Q. The EU is the European Union, right?  
05:34:40 21 A. That's right. They do charge an EU rate. Maybe that's  
05:34:45 22 something specific to the EU.  
05:34:46 23 Q. Okay. But in the United States, it's free, right?  
05:34:48 24 A. I don't know. I don't know the distinction between how  
05:34:52 25 they treat it in Europe and how they treat it here.

05:34:54 1 Q. This is your table, isn't it?

05:34:56 2 A. Yeah.

05:34:57 3 Q. And you've looked at the data in this table?

05:34:58 4 A. I have.

05:34:59 5 Q. And you didn't just leave a number out, right?

05:35:03 6 A. No.

05:35:03 7 Q. That is where it's blank, it means 0 percent for

05:35:09 8 software upgrade?

05:35:10 9 A. Yeah, that's nothing there. It's a 0.

05:35:12 10 Q. And so you -- maybe you could have chosen 0 percent,

05:35:16 11 but you chose 14 percent?

05:35:18 12 A. Because it dealt with TV backlight and dimming which

05:35:23 13 was more related to video adjustment and control

05:35:26 14 technology.

05:35:26 15 Q. Based on what, sir?

05:35:27 16 A. Based upon a high-level assessment of it.

05:35:30 17 Q. Is that based on your technical background?

05:35:34 18 A. I think that's pretty much observable fact when you

05:35:37 19 look at the attributes here.

05:35:39 20 Q. So you're just looking at a list of -- of words.

05:35:42 21 You're not looking at the actual patents themselves?

05:35:45 22 A. Well, and I know what those words mean, too.

05:35:47 23 Q. Okay. But you didn't look at patents?

05:35:51 24 A. The underlying patents under the Philips? No, I

05:35:55 25 didn't. I looked at this at a high level to get an

05:35:58 1 apportionment factor.

05:35:59 2 Q. Did Mr. Reed have somebody look at the patents?

05:36:01 3 A. He did.

05:36:01 4 Q. Who looked at them?

05:36:03 5 A. Mr. Stevenson.

05:36:04 6 Q. Okay. Dr. Stevenson, right?

05:36:05 7 A. Dr. Stevenson.

05:36:05 8 Q. And he -- Dr. Stevenson, who knows the technology, did

05:36:11 9 not come to the same conclusion as you did about the value

05:36:16 10 of that, right?

05:36:17 11 A. My recollection is that Mr. Reed and Dr. Stevenson both

05:36:20 12 questioned the categories and questioned a lot of things,

05:36:26 13 whereas I take Philips at its word in terms of what its

05:36:31 14 technology is worth because this is what it promotes to the

05:36:34 15 world.

05:36:34 16 Q. I understand that. But you didn't actually look at the

05:36:38 17 patents behind what you chose to see if they're even -- the

05:36:43 18 patents themselves are even relevant to the technology

05:36:45 19 we're talking about, right?

05:36:46 20 A. I didn't need to.

05:36:47 21 Q. Sir, that wasn't my question. You didn't look at the

05:36:51 22 patents behind the TV backlight and dimming to see if

05:36:55 23 they're even relevant to what we're talking about, correct?

05:36:57 24 A. I didn't because I didn't need to. That's what I just

05:37:01 25 said.

05:37:01 1 Q. Okay. And that one at the top there where I labeled it  
05:37:04 2 Audio?  
05:37:04 3 A. Yes.  
05:37:05 4 Q. Is that -- is that described elsewhere in the Philips  
05:37:09 5 documents as audio/video?  
05:37:11 6 A. Well, that was some of the stuff Dr. Stevenson and  
05:37:14 7 Mr. Reed looked at, and they were questioning basically the  
05:37:17 8 categories from Philips. I don't think either of them or  
05:37:23 9 me are in a position to question Philips.  
05:37:27 10 Q. Okay. So if somebody told you they had a patent on  
05:37:30 11 some technology you use, you would just accept that and pay  
05:37:34 12 the royalty rate?  
05:37:35 13 A. This is what they're telling the world that they price  
05:37:37 14 their technology at. I take them at their word.  
05:37:41 15 Q. Right. Or their word is relevant to the specific  
05:37:45 16 technologies they're licensing, right?  
05:37:48 17 A. Yes, that's their --  
05:37:50 18 Q. And you didn't even dig beyond the words on this  
05:37:54 19 screen, right?  
05:37:54 20 A. I didn't need to.  
05:37:56 21 Q. But you didn't?  
05:37:57 22 A. I didn't.  
05:37:58 23 Q. You didn't? Thank you.  
05:38:01 24 You see here, there's one called User Interface?  
05:38:05 25 A. I do.

05:38:06 1 Q. And that one has a rate of less than half of what you  
05:38:09 2 said for apportionment?

05:38:11 3 A. But the user interface could deal with a lot of other  
05:38:15 4 things, like you pointed out earlier when you go to that  
05:38:19 5 On-Screen-Display, things unrelated to video control. So  
05:38:24 6 that wouldn't be applicable here.

05:38:26 7 Q. And you haven't been here through this trial, but would  
05:38:30 8 it surprise you to know that we've been talking an awful  
05:38:32 9 lot about the user interface in this trial?

05:38:35 10 A. That wouldn't surprise me at all, but that's a part of  
05:38:37 11 it.

05:38:37 12 Q. Okay. But you didn't choose that rate?

05:38:39 13 A. Because that's going to have other elements.

05:38:41 14 Q. Because it's less than half of what you wanted to  
05:38:44 15 choose, right?

05:38:44 16 A. No. Because it's not on point.

05:38:45 17 Q. What about multi-angle video? That's -- that's about  
05:38:46 18 half of what you chose?

05:38:50 19 A. Is that a question? That's a statement.

05:38:52 20 Q. Is it correct?

05:38:53 21 A. It is. It's 7.3 percent.

05:38:56 22 Q. You didn't choose that?

05:38:57 23 A. No. It's not applicable.

05:38:59 24 Q. What is multi-angle video?

05:39:02 25 A. All I know is it doesn't have anything to do with video

05:39:07 1 adjustment and control technology.

05:39:08 2 Q. Were you here and you heard testimony during the trial

05:39:10 3 about the angles of the crystals and the screen changing

05:39:14 4 based on the adjustment to the color?

05:39:17 5 A. No, but I do -- I mean, I understand that idea, being

05:39:20 6 able to see it from different --

05:39:22 7 Q. No, that's not what I'm talk -- what I'm talking about,

05:39:26 8 sir, is one of the -- within a screen, you're aware there

05:39:30 9 are pixels, right?

05:39:31 10 A. Yes.

05:39:31 11 Q. In the screen, they are called liquid crystal diode

05:39:37 12 displays, right?

05:39:38 13 A. Yes.

05:39:38 14 Q. And are you aware that the crystals in the screen

05:39:41 15 change to different angles based on the colors that are

05:39:44 16 meant to be represented on the screen?

05:39:45 17 A. No, I didn't know that.

05:39:46 18 Q. You didn't -- you didn't go ask any type of

05:39:49 19 technologist whether multiangle video could be relevant to

05:39:53 20 the technology here?

05:39:53 21 A. I did not.

05:39:54 22 Q. Instead, you just chose the second highest rate on that

05:39:59 23 chart for your apportionment, right?

05:40:01 24 A. That's the rate I consider to be most applicable, yes.

05:40:06 25 MR. OLIVER: I'm at a good breaking point if you

05:40:09 1 want to break, or I can keep going, Your Honor.

05:40:09 2 THE COURT: Let's do. No. Thanks.

05:40:12 3 Ladies and gentlemen of the jury, we're going to

05:40:13 4 recess at this time. I appreciate your willingness to stay

05:40:16 5 a little longer. I will look forward to seeing you at 8:45

05:40:21 6 in the morning so that we can start promptly at 9:00.

05:40:24 7 Don't discuss the case with anyone. Don't do any

05:40:27 8 research or investigation into the case. Don't post

05:40:30 9 anything on any social media site about any of the

05:40:36 10 proceedings you have observed.

05:40:38 11 I hope you have a nice evening. I'll see you back

05:40:41 12 in the morning.

05:40:42 13 COURT SECURITY OFFICER: All rise for the jury.

05:40:42 14 (Jury out.)

05:41:19 15 THE COURT: Okay. Please be seated.

05:41:22 16 Mr. Perdue, you may step down.

05:41:26 17 By 10:00 a.m. in the morning, I would ask for a

05:41:29 18 new set of jury instructions. I recognize on the

05:41:32 19 instructions that were submitted by the parties, there are

05:41:35 20 not, you know, dozens of disagreements. So they're

05:41:40 21 actually in relatively good shape.

05:41:42 22 I would suggest that you-all have a substantive

05:41:45 23 conversation about those areas of remaining disagreement.

05:41:49 24 See if you can't work through that dispute.

05:41:53 25 If it's a question about whether they are

05:41:55 1 instructed on that or not, of course, I understand, you  
05:41:58 2 know, there -- there may be disputes about that. But in  
05:42:03 3 terms of the language, if you're down to a dispute that  
05:42:06 4 basically centers on, I like my language better than your  
05:42:11 5 language, I'm going to ask you to try to work through that  
05:42:14 6 and negotiate something.

05:42:15 7 Putting that aside, the major concern I have is  
05:42:22 8 the verdict forms. There were two submitted, and we need  
05:42:24 9 one submitted, so one verdict form submitted by both  
05:42:29 10 parties.

05:42:29 11 And then if you can -- all can do that by  
05:42:33 12 10:00 a.m. in the morning, we'll start working on it  
05:42:36 13 throughout the day tomorrow, and at the end of the day  
05:42:39 14 tomorrow, we will -- we'll have a charge conference where  
05:42:45 15 we will go through the party's disagreements and get that  
05:42:49 16 on the record.

05:42:51 17 Overnight on Thursday, I will make decisions about  
05:42:54 18 what is appropriate, and I'll give you an opportunity to  
05:42:59 19 put your objections on the record to the extent there are  
05:43:05 20 any that remain.

05:43:06 21 With respect to JMOLs, let me ask Mr. Bennett.

05:43:14 22 I take it Mr. Perdue is your last witness; is that  
05:43:18 23 correct?

05:43:18 24 MR. BENNETT: That's correct, Your Honor.

05:43:20 25 THE COURT: All right. You will rest when his

05:43:22 1 testimony is complete?

05:43:24 2 MR. BENNETT: We will rest.

05:43:25 3 THE COURT: All right. To the extent there will

05:43:27 4 be JMOLs that are made, I think we talked about this

05:43:33 5 earlier. I'm happy for them to be done, handled, however

05:43:39 6 the parties to prefer. If you want to do it in writing,

05:43:42 7 that's fine. If you want to do it orally, that is fine.

05:43:45 8 What I would ask is that we not keep the jury

05:43:48 9 waiting. So let's make your JMOLs in the morning if you

05:43:52 10 want you to do that. Let's make them over the break, if

05:43:53 11 you want to do that, over the noon hour, that's fine, or we

05:43:57 12 can do it after, you know, the case gets submitted to the

05:44:01 13 jury, or at the end of the day tomorrow, whatever. I just

05:44:05 14 don't want to make the jury wait.

05:44:06 15 MR. BENNETT: Plaintiff will agree and be

05:44:09 16 flexible, you know, no waiver or anything like that until

05:44:11 17 there's a good stopping point. We're amenable to that.

05:44:15 18 We're close on instructions. We're going to

05:44:18 19 narrow the gap as soon as we're done here.

05:44:20 20 The verdict form is a bit of a sticking point.

05:44:22 21 There's some very diverging views about what it should look

05:44:26 22 like. And a few attempts to try and bridge that gap have

05:44:29 23 been unsuccessful. So we just categorically view the form

05:44:34 24 differently.

05:44:34 25 THE COURT: Right. I see one is a shorter form,

05:44:37 1 and one is a much longer form.

05:44:40 2 MR. BENNETT: Right.

05:44:40 3 MR. OLIVER: Your Honor, if I may just address  
05:44:43 4 that. Here is the major problem. We see this as a case of  
05:44:49 5 representative products. We have been talking about 6-axis  
05:44:52 6 and 3-axis, and we want those two representative products,  
05:45:00 7 a verdict form for 6-axis and 3 -- the products separated  
05:45:04 8 like that. They just want just one infringement, no  
05:45:08 9 infringement. That's a major disagreement.

05:45:11 10 THE COURT: Okay. Well, you know, I don't -- it  
05:45:15 11 doesn't sound like you're going to make much progress on  
05:45:18 12 that, but do -- do what you can.

05:45:18 13 MR. BENNETT: Understood.

05:45:20 14 THE COURT: What else do we need to resolve before  
05:45:22 15 we adjourn?

05:45:24 16 MR. OLIVER: Couple of things from me, Your Honor.  
05:45:27 17 One, we haven't had a chance to meet and confer yet. I  
05:45:30 18 sent an email to the other side, but I trust they were busy  
05:45:34 19 so they haven't responded. It was what's going to happen  
05:45:35 20 tomorrow when Dr. Stevenson, our expert, takes the stand.  
05:45:39 21 And Mr. Saba made a reference to this. He said: Their  
05:45:43 22 expert hasn't reviewed the source code.

05:45:47 23 So the history of this is that they submitted a  
05:45:49 24 supplemental expert report when their expert addressed  
05:45:54 25 the -- that was after discovery. We didn't submit a

05:45:58 1 rebuttal report. They didn't depose our guy. We didn't  
05:46:02 2 depose their guy. So now, you know, Dr. Stevenson will  
05:46:04 3 talk about the source code if he is allowed.

05:46:07 4 THE COURT: On what basis?

05:46:08 5 MR. BENNETT: For clarity, we definitely deposed  
05:46:12 6 Dr. Stevenson.

05:46:15 7 THE COURT: What would be the basis for allowing  
05:46:18 8 him to render an opinion that he's not already rendered --

05:46:18 9 MR. OLIVER: Well, the --

05:46:25 10 THE COURT: -- or that's new?

05:46:25 11 MR. OLIVER: Well, the supplemental -- the  
05:46:27 12 supplemental report of Dr. Stevenson wasn't allowed by the  
05:46:30 13 Court's schedule. They just submitted it without  
05:46:32 14 permission.

05:46:33 15 THE COURT: The report of whom?

05:46:35 16 MR. JOSHI: Dr. Ducharme, I'm sorry.

05:46:37 17 THE COURT: Okay. Did you move to strike it?

05:46:40 18 MR. JOSHI: We didn't move to strike it, no.

05:46:44 19 So then, in the alternative, what we don't want --  
05:46:47 20 if Dr. Stevenson can't talk about source code, then --

05:46:49 21 THE COURT: If he has not disclosed an opinion  
05:46:52 22 about source code, he won't testify about an opinion on  
05:46:55 23 source code, I can tell you that.

05:46:57 24 MR. JOSHI: Okay. But would you then also allow  
05:47:01 25 them to criticize him for not -- not talking about source

05:47:03 1 code?

05:47:03 2 THE COURT: Why would he not be permitted to?

05:47:06 3 MR. JOSHI: Because -- here's the thing,

05:47:09 4 Your Honor, he --

05:47:10 5 THE COURT: Why would -- I guess why would they  
05:47:12 6 not be permitted to?

05:47:14 7 MR. JOSHI: Well, because that's not fair. That's  
05:47:16 8 prejudicial because they could have -- after Dr. Ducharme  
05:47:20 9 submitted his supplemental report and added source code to  
05:47:24 10 it, there was still time left for them to take a deposition  
05:47:27 11 of our expert or ask him if he had any opinion about that,  
05:47:33 12 which they didn't do.

05:47:34 13 So if we're not allowed to talk about source code,  
05:47:37 14 they shouldn't be allowed to criticize us for not talking  
05:47:40 15 about it either. Either let us talk about it, and then let  
05:47:43 16 us -- let them cross us on it, or if we don't get to talk  
05:47:48 17 about it, then they shouldn't be able to say, well, he  
05:47:50 18 didn't even look at the source code without the jury  
05:47:52 19 knowing why that is.

05:47:53 20 THE COURT: Mr. Bennett?

05:47:55 21 MR. BENNETT: So very different facts apply to our  
05:47:58 22 source code review than their rebuttal of that review. We  
05:48:03 23 asked for it. They didn't give it. We had to get a  
05:48:06 24 subpoena from MediaTek. It took them forever to respond.  
05:48:09 25 We've kind of been over some of these facts during this

05:48:12 1 trial.

05:48:13 2 They didn't -- when we supplemented because we  
05:48:17 3 barely got the source code, they didn't move to strike,  
05:48:20 4 ostensibly because they agreed with us that it probably --  
05:48:25 5 given the timing of things, it was going come in anyway.  
05:48:29 6 So after we supplemented, they didn't ask for rebuttal.  
05:48:34 7 They never approached us about a supplemental rebuttal.  
05:48:35 8 They never did supplement that.

05:48:37 9 So the idea that Dr. Stevenson, having seen the  
05:48:40 10 source code during trial, is now going to take the stand,  
05:48:44 11 the first time we're ever going to hear an opinion about  
05:48:48 12 source code is on the stand, that's severely prejudicial.

05:48:51 13 THE COURT: That will not happen, I can promise  
05:48:54 14 you.

05:48:54 15 MR. JOSHI: That's fine, Your Honor. But then, on  
05:48:56 16 the other side of the same coin, he is willing to.

05:49:04 17 So, Your Honor, just to give you kind of some  
05:49:10 18 balance. Today we heard testimony on damages for a report  
05:49:13 19 that was updated on Monday. Okay. So --

05:49:19 20 MR. OLIVER: (Inaudible.)

05:49:20 21 MR. JOSHI: I'm sorry, the update.

05:49:20 22 But my point is, if you don't want Dr. Stevenson  
05:49:22 23 to talk about source code, that's fine, he won't. But what  
05:49:26 24 I'm concerned about is them, then, repeatedly -- or maybe  
05:49:29 25 not repeatedly, but saying -- criticizing him for not

05:49:33 1 having reviewed the source code and not having talked --  
05:49:34 2 THE COURT: Well, I think it's an answer that, you  
05:49:36 3 know, is maybe a series of questions that, you know, I'll  
05:49:40 4 ask the Plaintiffs not to overdo. But the fact is he  
05:49:44 5 didn't and didn't submit a report on it and it's not coming  
05:49:48 6 in.

05:49:48 7 So, I mean, I think they certainly -- the -- you  
05:49:58 8 know, I mean, I think it was -- if it was not disclosed, he  
05:50:03 9 is not going to testify about it. And I think it's a fair  
05:50:07 10 thing for the Plaintiffs to point out. I just wouldn't  
05:50:11 11 overdo.

05:50:12 12 MR. BENNETT: Understood.

05:50:13 13 THE COURT: And the number, by the way, on the --  
05:50:15 14 on the -- to respond, I guess, Mr. Joshi, to the argument  
05:50:23 15 you were making that there was new information today with  
05:50:25 16 respect to the Plaintiff's damages expert, there was no  
05:50:29 17 surprise there. There was nothing new. The number did not  
05:50:33 18 change. That's why I allowed that in.

05:50:36 19 MR. JOSHI: Thank you, Your Honor.

05:50:37 20 THE COURT: But, Mr. Joshi, you know the  
05:50:39 21 disclosure rules on expert opinions are very vigorous in  
05:50:44 22 this district, and opinions are routinely kept out that are  
05:50:50 23 not adequately disclosed.

05:50:52 24 MR. JOSHI: And that's fine, Your Honor. I accept  
05:50:55 25 your ruling. And I also appreciate your directive that

05:51:00 1 don't overdo the fact that he -- you know, as long as we  
05:51:03 2 have that balance.

05:51:04 3 THE COURT: Well, we'll have that balance, but, I  
05:51:07 4 mean, yes.

05:51:09 5 MR. BENNETT: We've heard Your Honor, and we'll  
05:51:11 6 follow that directive.

05:51:13 7 THE COURT: Sure.

05:51:16 8 MR. JOSHI: One housekeeping -- our friend  
05:51:19 9 Mr. Oliver does want to speak with you, but one small  
05:51:22 10 housekeeping -- and maybe there's an easier way to do this  
05:51:26 11 but I have a number of exhibits that are pre-admitted and  
05:51:30 12 that were used with the expert. Would you like me to read  
05:51:33 13 them out now or submit an email or --

05:51:35 14 THE COURT: How about you read -- how about --  
05:51:36 15 let's do this because I think the Plaintiff's probably got  
05:51:40 16 some housekeeping on exhibits, as well. How about in the  
05:51:43 17 morning we go on the record a little early and we tend to  
05:51:47 18 exhibits for both sides, at least up to this point in  
05:51:52 19 trial; is that fair enough?

05:51:55 20 MR. BENNETT: Agreed. Yes, Your Honor.

05:51:55 21 THE COURT: Okay. It won't take very long, I  
05:51:59 22 don't think. Are most of these agreed?

05:52:01 23 MR. JOSHI: Yes.

05:52:02 24 THE COURT: Okay. Let's deal with that in the  
05:52:04 25 morning.

05:52:04 1 MR. JOSHI: Thank you, Your Honor.

05:52:05 2 THE COURT: Thank you, Mr. Joshi.

05:52:06 3 MR. OLIVER: Your Honor, thank you for your time

05:52:07 4 this evening.

05:52:08 5 One last issue, and I'll make a brief verbal

05:52:11 6 motion and we can submit it in paper if you would prefer

05:52:14 7 that as well. But ASUS moves to -- the Court to reconsider

05:52:18 8 the invalidity argument that was made at claim construction

05:52:22 9 and to clarify the claim construction.

05:52:26 10 The testimony we heard today from Plaintiff's

05:52:30 11 expert, he said that one could write software that within

05:52:34 12 the Court's claim construction could -- when somebody

05:52:38 13 selects red, that software can modify every single pixel

05:52:45 14 and be within the Court's claim construction. That

05:52:48 15 argument eviscerates two limitations of the claim. It

05:52:54 16 eviscerates the identifying pixels limitation, and it

05:52:57 17 eviscerates the without affecting any other color

05:53:00 18 limitation.

05:53:01 19 On that basis, ASUS reurges that the claim is

05:53:10 20 indefinite and asks the Court to clarify the claim

05:53:13 21 construction. And we can --

05:53:13 22 THE COURT: Mr. Joshi, let me ask you -- I mean,

05:53:14 23 I'm sorry -- Mr. Oliver, let me ask you to submit a short

05:53:18 24 brief on it, say, by, 10:00 p.m. tonight, and then I'll

05:53:21 25 look forward to a response from the Plaintiffs by 7:00 a.m.

05:53:25 1 Would that -- is that achievable?

05:53:31 2 MR. OLIVER: It is -- it'll be tough, but we can

05:53:34 3 do it.

05:53:35 4 THE COURT: Okay. I think I'd rather -- I'd

05:53:37 5 rather have an opportunity to review it on paper, and then

05:53:42 6 give the Plaintiffs an opportunity to respond to it.

05:53:46 7 What else?

05:53:47 8 MR. BENNETT: I have nothing else, Your Honor.

05:53:49 9 THE COURT: Okay. See you all in the morning.

05:53:51 10 Mr. Oliver, let me ask you. How much longer do

05:53:55 11 you expect with Mr. Perdue?

05:53:57 12 MR. OLIVER: Completely frankly, I'm going to have

05:54:02 13 to find out how much time we have remaining.

05:54:06 14 THE COURT: You have 5 minutes and 44 -- you have

05:54:08 15 4 minutes and -- you have 5 hours and 44 minutes remaining.

05:54:13 16 MR. BENNETT: And how about Plaintiffs?

05:54:15 17 THE COURT: I'm sorry?

05:54:16 18 MR. BENNETT: How about the Plaintiff?

05:54:17 19 THE COURT: You have 4 hours and 22 minutes

05:54:20 20 remaining.

05:54:22 21 I think we can get this to the jury tomorrow.

05:54:26 22 It's going to require, you know, streamlining things. We

05:54:30 23 might have to do a little bit of testimony on Friday

05:54:32 24 morning, but to get this to the jury Friday, it just needs

05:54:35 25 to be a little bit of testimony Friday morning.

05:54:39 1 So, you know, you've got the time. And so, you  
05:54:43 2 know, I think -- think -- I think I've given you too much  
05:54:54 3 time, and I'm not fussing with anybody, but I think this  
05:54:57 4 last cross-examination has been a little over long.

05:55:01 5 MR. OLIVER: And I'm imagining, based on how much  
05:55:04 6 time is left, that it will not go much longer.

05:55:08 7 MR. BENNETT: Quick question about closings and  
05:55:11 8 the charge. Does Your Honor read the charge, and then we  
05:55:17 9 close or the other way around?

05:55:18 10 THE COURT: Yes, the first.

05:55:20 11 MR. BENNETT: Okay. Thank you. It helps with  
05:55:22 12 closing, slides, and things. Appreciate it. Thank you.

05:55:25 13 THE COURT: And I'm not fussing at you,  
05:55:28 14 Mr. Oliver. I just think -- I think you all -- I think it  
05:55:32 15 was a little long. But you went 40 minutes after 5:00 --  
05:55:44 16 45 minutes after 5:00 and hopefully that knocked a chunk  
05:55:48 17 off of the outline.

05:55:50 18 MR. SABA: Your Honor, John Saba. I just wanted  
05:55:53 19 to ask. Can we -- would you be okay with us submitting our  
05:55:57 20 response to Mr. Oliver's request by 10:30 instead of 7:00?

05:56:01 21 THE COURT: Yes.

05:56:01 22 MR. SABA: Thank you, Your Honor.

05:56:02 23 THE COURT: Yes. I mean, as long as the -- well,  
05:56:03 24 when do we need a ruling on it?

05:56:07 25 MR. OLIVER: Think we need to know it before we

05:56:10 1 get the final jury instructions.

05:56:13 2 THE COURT: Oh, well, then, yeah, certainly.

05:56:15 3 MR. SABA: Thank you, Your Honor.

05:56:15 4 THE COURT: Certainly. That gives us plenty of

05:56:17 5 time.

05:56:17 6 MR. JOSHI: One -- one more reminder, Your Honor.

05:56:20 7 We -- on the inoperability issue, when Dr. Stevenson takes

05:56:23 8 the stand, we had talked about some time without the jury

05:56:27 9 for him to make his case on inoperability.

05:56:32 10 MR. BENNETT: So we talked about that. The only

05:56:36 11 hiccup for us is that Dr. Ducharme was designated as a

05:56:41 12 rebuttal expert on that issue. He is not going to be here

05:56:50 13 live. If the Court will allow us to present him remotely,

05:56:56 14 we could probably make that work. He had to head back

05:57:00 15 today to Florida.

05:57:01 16 THE COURT: Well, let me ask this. Is this

05:57:04 17 something that we could handle post-trial?

05:57:05 18 MR. BENNETT: I believe we could.

05:57:06 19 THE COURT: I think we were just doing it now for

05:57:08 20 the convenience of the witness, frankly.

05:57:11 21 MR. JOSHI: Yes.

05:57:11 22 MR. BENNETT: And that was going to be our

05:57:13 23 submission, which was let's see what happens and then go

05:57:17 24 from there.

05:57:17 25 THE COURT: Mr. Joshi, my preference would be

05:57:20 1 let's see whether this is necessary and if it is, we can  
05:57:24 2 handle it in post-trial proceedings. Would that be  
05:57:28 3 acceptable to ASUS?

05:57:31 4 MR. OLIVER: Yes.

05:57:34 5 MR. JOSHI: Yes.

05:57:34 6 THE COURT: Very well. See you all in the  
05:57:36 7 morning.

05:57:37 8 MR. BENNETT: Thank you, Your Honor.

05:57:38 9 COURT SECURITY OFFICER: All rise.

10 (WHEREUPON, these proceedings were adjourned,  
11 5:57 p.m.)

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COURT REPORTER'S CERTIFICATION

2 I HEREBY CERTIFY that the foregoing is a true and  
3 correct transcript from the stenographic notes of the  
4 proceedings in the above-entitled matter held on May 19,  
5 2021, to the best of my ability.

6

7 May 19, 2021  
Date

s/ KATHRYN McALPINE/  
KATHRYN McALPINE, RPR, CSR, CCR